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ABSTRACT

The political ideas of John Adams, Alexander Hamilton, John Jay, Thomas Jefferson, James Madison, and other Founders of the United States have been a rich civic legacy for successive generations of citizens. An important means of ensuring that these ideas on constitutional government continue to inspire and guide people in the 21st century lies in the curricula of secondary schools. Students need exposure to the constitutional thought of the Founders, and the documents that contain the Founders' ideas, if they are to be expected to think critically about these ideas in order to identify and maintain the best of them and to modify and improve upon the rest of them. Current secondary school curricula are flawed by neglect of core ideas in the political thought of the Founders. This volume is designed to address this flaw; its contents highlight the constitutional thought of important Founders in scholarly essays and teaching plans for high school history and government teachers and in document-based learning materials for students. The volume contains nine units, each of which is based on the ideas and primary sources found in essays originally published in "This Constitution: A Bicentennial Chronicle." Each of the nine units includes four elements: (1) An "Introduction" that announces the topic and main ideas of the constitutional government unit; (2) an essay written by a scholar that highlights primary sources on political ideas of one or more of the Founders of the United States; (3) a teaching plan for high school history and government teachers to guide their use of learning materials for students based upon the essay; and (4) a lesson for high school students of history and government designed to teach ideas in primary sources featured in the scholarly essay. (DB)

ED 355285

IDEAS OF THE FOUNDERS ON CONSTITUTIONAL GOVERNMENT

RESOURCES FOR TEACHERS OF HISTORY AND GOVERNMENT

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Ideas of the Founders on Constitutional Government: Resources for Teachers of History and Government

by

John J. Patrick
Principal Author and Editor

Project '87
American Historical Association
and
American Political Science Association
with
ERIC Clearinghouse for Social Studies/Social Science Education

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FAX (202) 483-2657

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About the Principal Author and Editor

John J. Patrick is the Director of the Social Studies Development Center of Indiana University. He is also Director of the ERIC Clearinghouse for Social Studies/Social Science Education and a Professor of Education at Indiana University.

Professor Patrick is an experienced author, editor, and developer of curriculum materials for teachers of history, civics, and government. He is co-author of many publications, such as *Lessons on the Constitution*, *Lessons on The Federalist Papers*, *Lessons on the Northwest Ordinance of 1787*, *Liberty and Order in Constitutional Government*, *James Madison and The Federalist Papers*, and *How to Teach the Bill of Rights*. In addition, he has published many articles on teaching and curriculum development in education journals and is co-author of the article on "Secondary Social Studies" in the 6th Edition of *The Encyclopedia of Educational Research*, sponsored by the American Educational Research Association.

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The principal author and editor of this work was John J. Patrick, Director of the Social Studies Development Center. Professor Patrick conceptualized the work, directed the development of the nine Teaching Plans and Lessons in this volume, and served as general editor of the publication. He wrote Lessons 1, 2, 3, 6, and 8. Professor Patrick was assisted by Frederick Drake, Claudia Collier-Seiter, Charles Titus, and Corinne Wright, who served as advisors in the development of this volume and as authors of Lessons 4, 5, 7, and 9.

Frederick Drake wrote Lesson 5. At the inception of this project, Frederick Drake was a history teacher at Dwight High School, Dwight, Illinois. He is now a member of the Department of History, Illinois State University.

Claudia Collier-Seiter wrote Lesson 7. She is a history teacher at Layton High School, Layton, Utah.

Charles Titus wrote Lesson 4. He is a member of the Department of History, Eastern Illinois University. At the inception of this project, Charles Titus was a staff associate at the Social Studies Development Center and a graduate student at Indiana University.

Corinne Wright wrote Lesson 9. She is a history and government teacher at Hunters Lane High School, Nashville, Tennessee.

The essays that precede each set of Teaching Plans and Lessons were written originally for the magazine published by Project '87, *this Constitution: A Bicentennial Chronicle*. These essays are reprinted here with permission of Project '87 of the American Historical Association and the American Political Science Association.

Four scholars served as reviewers of drafts of the materials. The panel of reviewers included:

Kermit Hall, Professor, Department of History and School of Law, University of Florida.

Ralph Lerner, Professor, Committee on Social Thought, University of Chicago.

Kent Newmyer, Professor, Department of History, University of Connecticut.

Marian Palley, Professor, Department of Political Science, University of Delaware.

Twelve secondary school teachers in Indiana served as reviewers and field test teachers in development of this volume. These teachers reviewed and evaluated all the lessons in this publication and used one or more of the lessons in their history and government courses. These twelve teachers are Mary Anthrop, Catherine Byers, Frederick Clark, Gretchen Colbert, Nelson Dowell, Kay Harper, Stanley Harris, Gerald Long, Karl Schneider, Carl Siler, Clarissa Snapp, and Beth Steinert.

The cover of this volume was designed by Charles S. Snyder.

Sheilah Mann, Director of Educational Activities, American Political Science Association, served as director of this project. As always, it was a pleasure to work with her. As in past activities of this kind, Dr. Mann was an able administrator, a helpful advisor, and a compatible colleague in carrying out the mission of the project.

—John J. Patrick
Indiana University
Bloomington, Indiana

Preface
Goals and Guidelines for Users of this Volume

The Founders of the United States were prolific thinkers and actors on principles of constitutional government. As they wrote about their political ideas, they also practiced and revised them. From their experiences in making thirteen state constitutions and the Articles of Confederation, they gained knowledge and wisdom to produce the Constitution of the United States in 1787.

For more than two hundred years, the political ideas of John Adams, Alexander Hamilton, John Jay, Thomas Jefferson, James Madison, and other Founders of the United States have been a rich civic legacy for successive generations of Americans. Will these foundational ideas on constitutional government inspire and guide Americans in the twenty-first century? A positive answer depends in part on the curricula of secondary schools. Unless students have opportunities in school to learn the constitutional thought of the Founders, they will neither know it nor appreciate it. If young Americans are not exposed to documents that contain the Founders' ideas on constitutional government, they cannot be expected to think critically about these ideas in order to identify and maintain the best of them, and to modify and improve upon the rest of them.

Numerous curriculum studies have acknowledged the secure place of constitutional studies in the curricula of secondary schools. These studies have also indicated that education on the U.S. Constitution is flawed by neglect of core ideas in the political thought of the Founders. At best, these ideas are merely mentioned in widely used history and government textbooks. Opportunities, however, are not provided for students to examine and evaluate the Founders' ideas on constitutional government, and to define and debate issues associated with these ideas.

Another serious deficiency of the textbook-dominated curricula of secondary schools is the neglect of primary documents in teaching and learning. Most high school students do not work with primary sources, the raw materials of historical inquiry that provide evidence for support or rejection of claims about people, events, and ideas in history. Thus, these students fail to experience challenges of historical inquiry that can lead to development of cognitive skills in analysis, synthesis, and critical thinking.

Goals of this Volume of Curriculum Resources

This volume has been designed to address the curriculum deficiencies noted above—neglect of the Founders' ideas on constitutional government and of the primary documents in which these ideas are recorded. The contents highlight the constitutional thought of important Founders in scholarly essays and teaching plans for high school history and government teachers and in document-based learning materials for their students. These curriculum resources can help high school teachers and their students to interpret the constitutional thought of the Founders through systematic examination of political documents of the founding period.

The overarching goals of the developers of this volume are to improve high school history and government courses by assisting users of these curriculum resources to

1) acquire knowledge of core ideas in the constitutional thought of Founders of the United States;

2) know important documents that exemplify core ideas on constitutional government of Founders of the United States;

3) develop cognitive skills in the analysis, synthesis, and appraisal of information and ideas in documents that exemplify the constitutional thought of the Founders;

4) develop skills in using evidence in documents to support or reject statements about ideas on constitutional government;

5) develop reasoned commitment to core ideas on constitutional government in the founding of the United States.

The preceding goals are consistent with standard curriculum guides for high school courses in United States history and government. Learning materials that reflect these goals, therefore, can be used to complement and enhance these courses. These goals, however, call for in-depth teaching and learning of ideas and cognitive skills that tend to be treated superficially in the standard textbooks and courses. Furthermore, these goals certainly pertain to education

for citizenship in a constitutional democracy, which has been a long-standing concern of social studies teachers in the United States.

Contents of this Volume

This volume of curriculum resources is designed in terms of ideas and documents in nine essays originally published in *this Constitution: A Bicentennial Chronicle*. This magazine was produced from September 1983 until the summer of 1988 by Project '87 of the American Historical Association and the American Political Science Association. The essays, by leading scholars, were selected by developers of this volume from a standard feature, *DOCUMENTS*, in each issue of the magazine. The essays in this magazine feature—*DOCUMENTS*—highlight ideas of the Founders on constitutional government in important primary sources of the founding period.

Each of the main units of this volume (Part I through Part IX) is based on the ideas and primary sources in one of the *DOCUMENTS* essays from *this Constitution: A Bicentennial Chronicle*. For example, Part I is organized around a *DOCUMENTS* essay by Robert S. Alley, "On Behalf of Religious Liberty: James Madison's *Memorial and Remonstrance*." A Teaching Plan and Lesson for high school students were written in terms of the ideas and primary sources in Professor Alley's *DOCUMENTS* essay. Teachers are advised to read Professor Alley's essay in preparation for using the Teaching Plan and Lesson in their high school history or government courses.

Each set of curriculum resources in this volume, from Part I through Part IX, includes four elements in this order:

- An "Introduction" announces the topic and main ideas on constitutional government treated in the set.
- A *DOCUMENTS* essay, reprinted from *this Constitution: A Bicentennial Chronicle*, highlights primary sources on political ideas of one or more Founders of the United States.
- A Teaching Plan for high school history and government teachers guides their use of learning materials for students based on the *DOCUMENTS* essay.
- A Lesson for high school students of history and government is designed to teach ideas in primary sources featured in the *DOCUMENTS* essay.

The nine *DOCUMENTS* essays reprinted in this volume are listed below, with information about the issue of *this Constitution: A Bicentennial Chronicle* in which each essay was originally published. The essays are listed in the order of their appearance in this volume of curriculum resources.

I. "On Behalf of Religious Liberty: James Madison's *Memorial and Remonstrance*" by Robert S. Alley, Issue No. 12 (Fall, 1986): 26–33.

II. "The Separation of Powers: John Adams' Influence on the Constitution" by Gregg L. Lint and Richard Alan Ryerson, Issue No. 11 (Summer, 1986): 24–31.

III. "The Virginia Plan of 1787: James Madison's Outline of a Model Constitution" by Robert A. Rutland, Issue No. 4 (Fall, 1984): 23–30.

IV. "The Preamble to the Constitution of the United States" by Donald S. Lutz, Issue No. 1 (September, 1983): 23–30.

V. "Writing the Constitution: The Report of the Committee of Detail, August 6, 1787" by James H. Hutson, Issue No. 3 (Summer, 1984): 23–30.

VI. "Alexander Hamilton: Federalist" by Jacob E. Cooke, Issue No. 7 (Summer, 1985): 22–31.

VII. "The Constitutional Thought of John Jay" by Richard B. Morris, Issue No. 9 (Winter, 1985): 25–33.

VIII. "Thomas Jefferson: Writings on the Constitution" by Charles T. Cullen, Issue No. 13 (Winter, 1986): 27–33.

IX. "Women and the Constitution, 1787–1876" by Linda K. Kerber, Issue No. 6 (Spring, 1985): 25–34.

Characteristics of the Teaching Plans and Lessons

The statements below describe distinctive characteristics of the Teaching Plans and Lessons for students in this volume. They are guides for classroom use of these materials.

1. These Teaching Plans and Lessons are compatible with standard secondary school courses in United States history and government. They treat central ideas on constitutional government that are included in curriculum guides and textbooks. Thus, use of these materials can be justified in terms of the typical goals and subject matter of standard high school courses.

2. These Teaching Plans and Lessons extend and enrich standard textbook treatments of topics on constitutional government. They do not duplicate the contents of textbooks. Rather, these materials enable teachers to provide detailed treatments of topics and ideas that are discussed briefly and superficially in standard textbooks and courses.

3. Each Teaching Plan and accompanying Lesson is organized in terms of clearly stated objectives. The subject matter of each lesson reflects the objectives, as do the questions and other learning activities.

4. These Teaching Plans and Lessons encourage application of knowledge in the performance of various kinds of lower-level and higher-level cognitive tasks. Students are challenged to identify and comprehend main ideas in documents, to analyze and synthesize information associated with these main ideas, and to make various kinds of judgments about these ideas.

5. These teaching and learning materials emphasize the use of documents as primary sources of information and ideas on constitutional government during the founding period of United States history. Each Lesson is organized around one or more documents featured in an accompanying essay by a leading scholar. Learning activities are designed to develop various cognitive skills through careful reading and systematic discussion of information and ideas in documents that are embedded in these materials. Students are required to find and use evidence in these documents to support or reject answers to questions and to challenge or confirm

the comments of participants in classroom discussions.

6. Each Lesson includes commentary about the persons, ideas, and historical events associated with the documents that students are expected to closely read, interpret, and discuss. These commentaries explain the historical significance of the documents. They also include discussion of key ideas in the documents and provide pointers to help students read them more easily and meaningfully.

7. The documents in these Lessons are abridged and edited to make the key ideas in them comprehensible to larger numbers of high school readers. Questions and exercises on these documents are designed to focus students' attention on the main ideas and to require students to reason carefully about them.

How to Select and Use the Lessons in this Volume

These nine Teaching Plans and accompanying Lessons for high school students are not presented as a complete course of study. Rather, these materials should be viewed as a pool of curriculum resources that different teachers will draw upon in different ways to supplement their courses in United States history and government. Each set of curriculum resources (Parts I-IX) can be used singly, without reference to other materials in this volume. Given the need to cover many other topics in a limited period of time, it is unlikely that most teachers will be able to use more than two or three of these lessons in a one-semester course of study. Thus, this collection provides teachers with a variety of topics from which to select the few that they prefer to use with their students.

Some teachers may decide to use most, or all, of the materials as reference materials for themselves or for students working on independent study projects. Teachers, for example, may find the *DOCUMENTS* essays and the lessons to be useful sources of information and ideas to use in lectures or classroom discussion. These materials might also be assigned to students doing research for a paper or oral report. Another way to use these curriculum resources is to select and assign to students a particular portion of a Lesson. For example, a teacher may select and assign to students only one of a total of three documents that are included in a Lesson. Teachers are encouraged to use these materials variously to suit their own objectives and the particular needs of their students.

All materials needed to teach a Lesson are provided in this volume. However, teachers are encouraged to expand or improve upon these materials by exposing students to related learning materials. Teachers are also encouraged to adapt these Teaching Plans and Lessons to fit their styles of teaching, their perceptions of student needs, and their classroom circumstances.Teaching Plans are presented as general suggestions, not as prescriptions. For example, each Lesson includes more questions and learning activities than most teachers will want to use.This has been done to provide teachers with choices. It is expected that teachers will select only those questions and learning activities that they think are most suited for their students and ignore other items that seem less interesting or useful to them.

Little time is needed to prepare to use a Lesson in this volume. Follow these steps:

- Read the "Introduction" to the set of curriculum resources.
- Read the *DOCUMENTS* essay in order to acquire background information on the topic and documents of the Lesson.
- Read the Teaching Plan and the Lesson for students.
- Make copies of the Lesson for students in your class and distribute these materials to them.
- Follow or modify the teaching suggestions for opening, developing, and concluding the Lesson, which are presented in the Teaching Plan.

Teachers have permission to copy and distribute copies of all materials in this volume for use with their students.

The curriculum resources in this volume—the *DOCUMENTS* essays, the Teaching Plans, and the Lessons—are means for exposing high school students to a rich civic legacy, the constitutional thought of the Founders. However, thoughtless acceptance of the Founders' ideas is NOT part of this program. Rather, the intention is to prompt reflection and inquiry on fundamentals of constitutional government in the United States, and in this way to influence both preservation and improvement of this civic legacy.

PART I

Introduction

On Behalf of Religious Liberty: James Madison's *Memorial and Remonstrance*

Teaching Plan for Lesson 1

Lesson 1: James Madison and Religious Liberty

I
Introduction

Freedom of religious expression is an important civil liberty in the United States. Individuals are free to worship or not worship as they choose, and many religious denominations have flourished in the United States of America. This splendid religious pluralism is protected from government interference by the U.S. Constitution in Article VI, Amendment I, and Amendment XIV:

- Article VI: "[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."
- Amendment I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."
- Amendment XIV: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (The U.S. Supreme Court has held that First Amendment freedoms are applicable to the states through the Fourteenth Amendment limitations on state government powers.)

James Madison was a major builder of the foundation for religious liberty in the United States. He had a big part in the legal definition of religious freedom in his state, Virginia, which influenced the establishment of this principle in other states and in the Constitution of the United States.

Madison eloquently presented his ideas on religious liberty in *A Memorial and Remonstrance*, 1785. Madison wrote this document to protest legislation proposed in the Virginia General Assembly for government financial support of Christian religious institutions. Madison's arguments prevailed, and the cause of religious freedom was advanced.

A short time later, January 19, 1786, the General Assembly again supported ideas expressed in *A Memorial and Remonstrance* by passing Thomas Jefferson's Bill for Establishing Religious Freedom. This act settled the issue of religious freedom in Virginia; and other states followed Virginia's example, as did the federal government with passage in 1791 of the Constitution's First Amendment, which Madison had a direct part in writing and passing.

Robert S. Alley lauds James Madison "as America's premier exponent and practitioner of the principle of freedom of conscience" (*James Madison on Religious Liberty*, 1985, 11). He rates *A Memorial and Remonstrance* as one of the great documents of the American civic tradition.

Part I of this volume includes an essay by Robert S. Alley: "On Behalf of Religious Liberty: James Madison's *Memorial and Remonstrance*." Professor Alley discusses the conditions that prompted Madison to write *A Memorial and Remonstrance* and the consequences of this action. Alley also comments on Madison's lasting contributions to the cause of religious liberty in the United States.

Alley's essay is followed by a Teaching Plan and a Lesson for high school students: "James Madison and Religious Liberty." The Teaching Plan and Lesson provide materials for high school history and government courses on core ideas in our American heritage of religious liberty.

DOCUMENTS

On Behalf of Religious Liberty: James Madison's *Memorial and Remonstrance*

by ROBERT S. ALLEY

History binds James Madison inextricably to the Constitution's First Amendment and its religion clause. The classic statement of his position on religion and the state is found in *A Memorial and Remonstrance*, written in the spring of 1785. Madison's later correspondence makes it clear that he considered the *Memorial* to be his definitive argument for freedom of conscience.

The *Memorial* was Madison's contribution to a debate over two proposals in the 1784 Virginia legislature. One bill would incorporate the Episcopal Church in the state; the other, "The General Assessment Bill," sought to raise funds "for the support of Christian teachers" in order "to correct the morals of men, restrain their vices and preserve the peace of society." Both measures had the strong endorsement of Patrick Henry.

The Virginia debate over religious liberty had its roots in a clash of ideas and wills that began to emerge in the colony in the 1740s. Virginia, like the other colonies had inherited the concept of an established religion from English practice. Because the earliest colonists—Puritans and Separtists—had sought freedom of religious expression, no common pattern of establishment emerged. Massachusetts had created a theocratic structure with the rule of the "saints"; other colonies tended to adopt systems that subordinated religious institutions to temporal power. With the striking exception of Roger Williams' tenure in Rhode Island, the universal practice in the 1600s was establishment, but by 1700, an enlarged variety of Protestant denominations demanded, even in the most restrictive colonies, a degree of toleration. In the case of Virginia, the Church of England was the established religion. By the 1740s, however, the heavy population of Presbyterians in the western mountain areas of that state had led officials to develop a more accepting policy relating to that denomination. By the 1760s, Baptists had moved into the colony, many insisting upon total religious freedom. Refusing to obtain licenses to preach from the colonial authorities, Baptist clergy were beaten and jailed.

Responding to these events, a young James Madison in January 1774 wrote to a friend of "that diabolical hell conceived principle of persecution," noting "there are at this [time?] in the adjacent County not less than 5 or 6 well meaning men in [jail] for publishing their religious Sentiment." Madison observed that he was "without common patience" on the subject and begged his friend "to pity me and pray for Liberty of Conscience."

Within a short time, Madison found occasion to act on his concerns. In 1776 he served on a committee with George Mason to develop a Virginia declaration of rights. In large part Mason wrote the final document but Madison accomplished one critical change when he convinced Mason to replace the term "toleration in the exercise of religion" with the now familiar phrase "the free exercise of religion." While Madison later wrote a generous interpretation of that incident, stating that Mason "had inadvertently adopted the word 'toleration'," in fact Madison advanced a radical departure from tradition, anticipating the Jeffersonian notion of religious freedom as a "natural right of mankind."

The introduction of the two measures in the Virginia General Assembly in 1784 came from a general concern over the decline of all the churches in Virginia. With Patrick Henry's backing (he was now Governor) the Bill seemed destined to pass by a small majority. Through adroit political action by Madison and his supporters, action on the Assessment bill was delayed until the fall of 1785.

When the Assessment bill reached the public in broadsides, Baptist and Presbyterian groups flooded the Assembly with petitions and memorials signed by thousands of citizens. George Nicholas and George Mason, seeing the swell of public opinion, urged Madison to write a memorial on the subject and "commit it to paper." Madison agreed and the *Memorial* was the result. Madison probably considered his authorship a potential liability in the debate he anticipated in the House of Delegates later in the year. So when his document was distributed for signatures it appeared anonymously, leading some to conclude that Mason might have penned it. Madison's letter to Jefferson in August, 1785 identified himself as the source of the *Memorial*: "I drew up the remonstrance herewith enclosed," a fact that became common knowledge by 1786.

When the Assembly returned to work in the fall of 1785, a great number of memorials and petitions from dissenting religious groups, signed by a massive number of citizens, awaited the body. So dramatically had the mood changed in the Assembly that the Assessment Bill never reached the House floor. The reversal of sentiment proved startling enough that Madison made bold to introduce Jefferson's "Revised Code" for the state. It included an Act for Establishing Religious Freedom, reported to the House on December 14, 1785. On January 16, 1786 the House passed it. Upon agreement

TO THE

HONORABLE THE GENERAL ASSEMBLY

OF

THE COMMONWEALTH OF VIRGINIA.

A MEMORIAL AND REMONSTRANCE.

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last session of the General Assembly, entitled, "A Bill establishing a Provision for Teachers of the Christian Religion," and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it; and to declare the reasons by which we are determined. We remonstrate against the said Bill,

Because, We hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence."* The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated in their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him; this duty is precedent, both in order of time, and in degree of obligation, to the claims of civil society. Before any man can be considered a member of civil society, he must be considered as a subject of the Governor of the Universe: And if a member of civil society, who enters into any subordinate association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular civil society, do it with a saving of his allegiance to the Universal Sovereign. We maintain, therefore, that in matters of religion, no man's right is abridged by the institution of civil society; and that religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a society, can be ultimately determined, but the will of the majority; but it is also true, that the majority may trespass on the rights of the minority.

Because, If religion be exempt from the authority of the society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and virtgerents of the former. Their jurisdiction is both derivative and limited. It is limited with regard to the co-ordinate departments; more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely that the metes and bounds which separate each department of power be invariably maintained; but more especially, that neither of them be suffered to overleap the great barrier, which defends the rights of the people. The rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are tyrants. The people who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

Because, It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease, any particular sect of Christians, in exclusion of all other sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever.

Because, The bill violates that equality which ought to be the basis of every law; and which is more indispensible, in proportion as the validity or expedition of any law is more liable to be impeached. If "all men are by nature equally free and independent,"† all men are to be considered as entering into society on equal conditions, as relinquishing no more, and therefore retaining no less, one than another, of their rights. Above all are they to be considered as retaining an "equal" title to the free exercise of religion according to the dictates of conscience."‡ Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those, whose minds have not yet come to the same conclusion which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be trusted with the care of public worship? Ought their religions to be endowed, above all others, with extraordinary privileges, by which proselytism may be entited from all others? We think too favorably of the justice and good sense of these denominations, to believe, that they will have any thing to fear from the power over their fellow citizens, or that they will be seduced by them, from the common opposition to the measure.

Because, The bill implies, either that the Civil Magistrate is a competent judge of religious truth; or that he may employ religion as an engine of civil policy. The first is an arrogant pretension, falsified by the contradictory opinions of rulers in all ages, and throughout the world: The second an unhallowed perversion.

Because, The establishment proposed by the bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the very page of it disavows a dependence on the powers of this world: It is a contradiction to fact; for it is known that this Religion did actually stand, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous propagation, but long after it had been left to its own evidence, and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this conclusion in its inness excellence, and the patronage of its author; and to foster in those who still reject it, a suspicion, that there are not in its favor, to trust it to its own merits.

Because, Experience witnesseth, that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Inquire of the teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect point to the ages prior to its incorporation with civil policy. Propose a restoration of this primitive state, in which its teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for, or when against their interest?

Because, The establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government, only as it is a means of supporting religion; and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within the cognizance of civil government, how can its legal establishment be said to be necessary to civil government? What influence, in fact, have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established clergy, convenient auxiliaries. A just government, instituted to secure and perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his Religion, with the same equal hand, which protects his person, and his property; by neither invading the equal rights of any sect; nor suffering any sect to invade those of another.

Because, The proposed establishment, is a departure from that generous policy; which, offering an asylum to the persecuted and oppressed of every nation and religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself, a signal of persecution. It degrades from the equal rank of citizens all those whose opinions in religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition, it differs from it only in degree. The one is the first step, the other the last, in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign regions, must view the bill as a beacon on our coast, warning him to seek some other haven, where liberty and philanthrophy, in their due extent, may offer a more certain repose from his troubles.

Because, It will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration, by revoking the liberty which they now enjoy, would be the same species of folly, which has dishonored and depopulated flourishing kingdoms.

Because, It will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm to extinguish religious discord, by proscribing all differences in religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theatre has exhibited proofs, that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the state. If, with the salutary effects of this system under our own eyes, we begin to contract the bonds of religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the bill has transformed "that Christian forbearance, love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of a law?

Because, The policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it, with the number still remaining under the dominion of false religions; and how small is the former? Does the policy of the bill tend to lessen the disproportion? No: it at once discourages those who are strangers to the light of revelation from coming into the region of it; and countenances, by example, the nations who continue in darkness, in shutting out those who might convey it to them. Instead of levelling as far as possible, every obstacle to the [illegible]

Madison's Memorial and Remonstrance. Library of Congress.

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from the Senate, the Speaker of the House signed the bill into law on January 19. Jefferson wrote Madison in December of that year that the Act had been received with "infinite approbation in Europe" and he noted "it is comfortable to see the standard of reason at length prevail." Consistent with the Declaration of Rights and the *Memorial*, Jefferson's "Act" stated:

> *That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.*

The *Memorial and Remonstrance* both affirmed the principle of religious freedom and helped to defeat the Assessment Bill. It memorialized the General Assembly, offering fifteen "remonstrances" against the proposed Assessment bill.

In his introduction to the list of remonstrances, Madison explained that the signers of the petition took action because they believed the Assessment Bill would constitute a "dangerous abuse of power." The remonstrances that follow this declaration comprised a list of reasons for this judgment. In the first remonstrance, Madison made three points: that religion can only be directed by conviction and reason; that "Civil Society" has no role to play with respect to religion, and that permitting the majority to rule absolutely can result in the destruction of rights of the minority. In the second remonstrance, he contended that if the legislature passed the bill, it would be exceeding its lawful authority.

TO THE HONORABLE THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF VIRGINIA A MEMORIAL AND REMONSTRANCE

We the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." [Article XVI, Virginia Declaration of Rights] The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men: It is unalienable also, because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governour of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the General Authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance. True it is, that no other rule exists by which any question which may divide a Society can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.

2. Because if Religion be exempt from

the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves not by an authority derived from them, and are slaves.

In the third argument, which contains in the first sentence Madison's most often quoted phrase, he warned against allowing *any* government interference with human rights, a lesson learned, he said, in the recent Revolution. An authority that taxes for the support of Christianity, may "with the same ease" later choose to establish a single Christian sect.

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealously to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait til usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in conclusion of all other Sects? that the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

At this point Madison argued that individuals possess equal natural rights to their religious beliefs and he refined earlier arguments made by persons such as Roger Williams, as he insisted that coercion in religion is an offense against God.

4. Because the Bill violates that equality which ought to be the basis of every law. . . . If "all men are by nature equally free and independent," all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of Conscience." [Virginia Declaration of Rights. This is the phrase created by Madison in 1776.] Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions. . . .

Madison addressed the twofold issue of establishment and free exercise in remonstrance five. He provided here both a strong argument for the protection of the state from religion, and he labeled as a "perversion" of religion its use to achieve political ends.

5. Because the Bill implies either that the Civil Magistrate is a competent Judge of Religious Truth; or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world: the second an unhallowed perversion of the means of salvation.

Madison was seeking signatures from Baptists and Presbyterians. The sixth item appealed to their concerns by making the Christian argument for religious freedom. He contended that Christianity does not require state support to flourish and that seeking it demeans its divine nature. Once again one is reminded of Roger Williams. Madison continued this line of argument in remonstrance twelve.

> *6. Because the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them, and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of Providence. Nay, it is a contradiction in terms; for a Religion not invested by human policy, must have preexisted and been supported, before it was established by human policy. It is moreover to weaken in those who profess this Religion a pious confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.*

In remonstrance seven Madison argued that state support historically has damaged the Christian cause.

> *7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and inaolence in the Clergy, ignorance and servility in the laity, in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive State in which its Teachers depended on the voluntary rewards of their flocks, many of them predict a downfall. On which Side ought their testimony to have greatest weight, when for or when against their interest?*

Contrary to some modern interpreters, Madison was not only concerned over interference by the state into church affairs, he was equally disturbed over the prospect of religious institutions working their will on the civil government. If religion does not require state assistance, Madison asserted, good government does not need assistance from an established religion.

> *8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within the cognizance of Civil Government how can its legal establishment be necessary to Civil Government? What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries. A just Government instituted to secure & perpetuate it needs them not. Such a Government will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.*

Madison next pointed out that the "generous policy" of freedom from religious establishment in the nation offered asylum to persecuted persons

abroad, promising a "lustre" to our country. To tax for support of religion would drive potential immigrants to other states, and encourage native Virginians to leave.

> *9. Because the proposed establishment is a departure from that generous policy, which, offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden degeneracy? Instead of holding forth an Asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his Troubles.*
>
> *10. Because it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonoured and depopulated fluorishing kingdoms.*

Washington referred to the destruction of harmony among religious sects, Madison's next point, when he wrote that he wished the Assessment Bill had never been introduced. Only religious freedom and equality among religions assures domestic peace, wrote Madison.

> *11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish Religious discord, by proscribing all difference in Religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American Theatre has exhibited proofs that equal and compleat liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If with the salutary effects of this system under our own eyes, we begin to contract the bounds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the Bill has transformed "that Christian forbearance, love and charity," [Virginia Declaration of Rights] which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of law?*

Appealing at this point to the missionary zeal of the dissenters, Madison insisted that making Virginia a Christian state would discourage non-Christians from migrating. This, in turn, would hinder the spread of the gospel.

> *12. Because the policy of the Bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy the precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the Bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the Religion of it; and countenances by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of Levelling as far as possible, every obstacle to the victorious progress of Truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defence against*

the encroachments of error.

The Assessment Bill is unwise, Madison argued, because so many Virginians will find it "obnoxious" that it will be unenforceable.

> *13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws in general, and to slacken the bands of Society. If it will be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the Government, on its general authority?*

Madison was even willing to argue that the majority do not favor this bill, a risky digression given his contention earlier that the majority should not be allowed to decide in matters of natural rights. Nevertheless, he was dealing with an Assembly that took public opinion quite seriously and he undoubtedly was banking on overwhelming popular opposition to assessment. He was correct.

> *14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the Bill to the next Session of Assembly." [From a resolution by opponents of Assessment passed by the General Assembly in October, 1784, that staved off enactment of the Assessment Bill.] But the representation must be made equal, before the voice either of the Representatives or of the Counties will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the Bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the letter will reverse the sentence against our liberties.*

Returning to his basic themes, Madison concluded with a ringing defense of natural rights, warning the Virginia Assembly that it has no authority to "sweep away all our fundamental rights." If it can establish a religion, it could then, if it wished, eliminate trial by jury. Madison reminds us that religious freedom is, in its origin, "the gift of nature," and once more affirmed that, in his view of deity, such freedom of conscience is the only policy consistent with that deity. He argued not from dogma, but from reason and natural rights. By so doing he established a portrait of a creator consistent with such rights.

> *15. Because finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" [Virginia Declaration of Rights] is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the "Declaration of those rights which pertain to the good people of Virginia, as the basis and foundation of Government," it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say that the Will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say that they may controul the freedom of the press, may abolish the Trial by Jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly or, we must say, that they have no authority to enact into law the Bill under consideration. We the Subscribers say, that the General Assembly of this Commonwealth have no such authority. And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their Councils from every*

act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his [blessing, may re]dound to their own praise, and may establish more firmly the liberties, the prosperity and the happiness of the Commonwealth.

The growing number of Protestant sects in the colonies, combined with the variety of established churches, probably made inevitable the practical solution of church/state separation in the First Amendment. But if that were the sum of it, then an emerging majority in a later generation could justify a "practical" return to state support of churches under new circumstances. The genius of Madison and Jefferson laid down that "wall of separation" in the context of a principle best described by Jefferson in his *Bill for Establishing Religious Freedom*. Of the freedom of conscience he wrote: "The rights hereby asserted are of the natural rights of mankind, and . . . if any act shall be hereafter passed to repeal the present, or narrow its operation, such act will be an infringement of natural rights."

As a member of the first Congress under the new Constitution, James Madison received appointment to the select committee on constitutional amendments. After intense debate over procedure, the committee proposed a "bill of rights" for consideration by the House of Representatives. On August 15, in floor debate Madison remarked to his colleagues that he understood the meaning of the first clause of the religion bill—"No religion shall be established by Law, nor shall the equal rights of conscience be infringed"—to be "that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience." After debate the wording of the phrase was altered, on motion by Fisher Ames of Massachusetts, to read, "Congress shall make no laws establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience." A conference committee, with Madison as a member, produced the form in which the amendment was adopted by both Houses: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," employing Madison's phrase, "free exercise," which he had added to the Virginia Declaration of Rights in 1776. Madison would have preferred to extend the guarantees

Old Christ Church, Alexandria, VA. Library of Congress.

of free conscience, free speech, free press and trial by jury to the states. He reasoned that "it was equally necessary that [these rights] be secured against the state governments." His failure to achieve extension of protection of these rights to the states had no effect upon Madison's full and vigorous support of the First Amendment as adopted. Until his death in 1836 Madison believed that the nation supported his commitment to total and complete separation of church and state. To be sure, not all the founding fathers were in agreement with Madison, but his influence on the subject loomed large. By 1833, all the states had developed bills of rights that reflected the Madisonian view. Modern interpretations of the First Amendment must consider Madison's eloquent presentation of his principles regarding a free conscience in a secular state, not only because of his primary role in Congress in 1789, but also because his insights have currency for the continuing discussion of this constitutional question.

The text for the *Memorial* is to be found in the Library of Congress; it is reprinted in *The Papers of James Madison*, volume 8, Robert A. Rutland and William M. E. Rachal, eds. (University of Chicago Press, 1973).

Robert S. Alley is professor of humanities at the University of Richmond. His most recent book is *James Madison on Religious Liberty* (1985).

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I
Teaching Plan for Lesson 1
James Madison and Religious Liberty

Objectives

Students are expected to

1) know the importance of the following documents in the American heritage of religious liberty: (a) Virginia Declaration of Rights, (b) *A Memorial and Remonstrance*, (c) Virginia Act for Establishing Religious Freedom, and (d) Amendment I of the U.S. Constitution;

2) know James Madison's contributions to the cause of religious liberty;

3) explain the circumstances that led to Madison's authorship of *A Memorial and Remonstrance*;

4) identify and interpret main ideas about religious liberty in *A Memorial and Remonstrance*;

5) interpret and appraise information in a primary source, *A Memorial and Remonstrance*;

6) explain the connection between *A Memorial and Remonstrance*, the Virginia Act for Establishing Religious Freedom, and Amendment I of the U.S. Constitution.

Preparing to Teach the Lesson

Read the essay in Part I by Robert S. Alley, "On Behalf of Religious Liberty: Madison's *Memorial and Remonstrance*." Pay special attention to these parts of Alley's essay: (a) the complete text of *A Memorial and Remonstrance*, (b) evidence of the origins of *A Memorial and Remonstrance*, (c) claims about the importance of *A Memorial and Remonstrance* to the cause of religious liberty, and (d) discussion of Madison's ideas on religious liberty.

Read Lesson 1, "James Madison and Religious Liberty." Pay special attention to the abridged and edited version of *A Memorial and Remonstrance*, which is the focal point of the lesson.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Read the statements about religious freedom in Article VI and Amendment I of the U.S. Constitution. Ask students to discuss these statements in the Constitution about religious liberty: What are their constitutional rights? Why are they valuable?

Inform students that the main point of this lesson is to examine the Virginia origins of their religious liberty rights, which are reflected in three documents: (a) the Virginia Declaration of Rights, 1776, (b) *A Memorial and Remonstrance*, 1785 (a petition against government support of religion), and (c) the Virginia Act for Establishing Religious Freedom.

Developing the Lesson

Ask students to read the Lesson and prepare answers to the questions in the sections on "Reviewing Facts and Main Ideas" and "Examining Evidence in Documents." Conduct a class discussion on the assigned reading and questions. Spend most time on the questions about the documents, especially *A Memorial and Remonstrance*. Question 2 is designed to require a close reading of certain highlighted sections of this document. Students' answers may vary, but within limits set by the contents of the document. Require students to justify answers with evidence from primary documents. Encourage students to challenge one another to back up answers with evidence from the primary sources.

Concluding the Lesson

Assign the questions in the final category: "Making Judgments about Ideas in Documents." You might want to divide students into small groups of five to seven members. Ask them to discuss items 1 and 2. Select one person in each group to serve as a chairperson to manage the discussion. Select another member of each group to be the group's reporter in a subsequent full-class discussion. Ask the reporters of each group to report to the class the prevailing opinions in the group in response to question 1, about the most important section of *A Memorial and Remonstrance*. Then invite the entire class to respond with comments and questions about these reports. Repeat this procedure in discussion of item 2, about the contents of three statements on religious freedom.

I
Lesson 1
James Madison and Religious Liberty

"Freedom" was the watchword in Virginia in the springtime of 1776: *freedom* from colonial bondage, *freedom* of self-government, *freedom* from any kind of tyranny, *freedom* of speech and religious belief. The rebellion against Britain had gone on for more than a year, and Virginia was moving toward independence, with its own constitution and free government.

Virginians called for a Revolutionary Convention in Williamsburg to "prepare a Declaration of Rights, and such a plan of government [constitution] as will be most likely to maintain peace and order in the colony; and secure substantial and equal liberty to the people." James Madison of Montpelier, only twenty-five years old, was elected to be a delegate from Orange County to the Revolutionary Convention.

George Mason played the major role in the Convention, but Madison, despite his youth, made an original and enduring contribution to religious freedom. Article XVI of the Virginia Declaration of Rights includes these words contributed by James Madison: "[A]ll men are equally entitled to the free exercise of religion."

Virginia, like most states in the world of 1776, had an official religion. The Anglican Church was established in 1606 by the first Charter granted to the Virginia Company. Many Virginians, however, were not members of the official Anglican Church. They chose to be Methodists, Baptists, Presbyterians, or members of some other Christian church. So, Article XVI of the Virginia Declaration of Rights seemed to reflect social reality in Virginia in 1776.

Conflict Over the Meaning of Religious Freedom

Article XVI of the Virginia Declaration of Rights was a bold step forward in the cause of religious freedom, but Virginians interpreted it differently, which led to a serious political conflict in 1784–1785. The issue was raised by the popular Patrick Henry, who introduced a General Assessment bill to the General Assembly in 1784. Henry's proposal was titled, "A Bill Establishing a Provision for Teachers of the Christian Religion."

Henry's General Assessment bill called for payment of taxes to support Virginia teachers of the Christian religion. Each taxpayer, however, could designate which church (Anglican, Methodist, Baptist, etc.) would receive his share of the tax to pay for religious education. Thus, the General Assessment bill designated all Christian churches as official or "established" religions of the state of Virginia. Patrick Henry spoke in the General Assembly for his bill and emphasized the following points:

- A free and stable government cannot be sustained without the support of Christian institutions.
- Public and private morality will suffer unless Christian religious institutions in the state are strong and active.
- History records the decline and fall of nations that failed to support their religious institutions.
- Christian institutions in Virginia are suffering from lack of voluntary financial support.
- Therefore, it is proper, for the good of the state, to require citizens of Virginia to pay a tax for support of ministers and their churches.

James Madison opposed Patrick Henry's arguments. He argued that the General Assessment bill was an unacceptable limitation on the individual's freedom of conscience. Further, Madison argued that Henry's bill was in violation of Article XVI of the Virginia Declaration of Rights: "[A]ll men are equally entitled to the free exercise of religion, according to the dictates of conscience." To Madison, "all men" meant every person— Christian and non-Christian, believers and non-believers. He said that it would be wrong for the government to require non-Christians to pay taxes to the government to support institutions in which they did not believe.

Patrick Henry's bill for the support of "teachers of the Christian religion" passed on its first reading in the General Assembly by a vote of 47 to 32. A short time later (November 17, 1784), the bill's strongest advocate, Patrick Henry, left his seat in the General Assembly to become Governor of Virginia. However, important backers of Henry's bill remained, including John Marshall, Edmund Randolph, and Richard Henry Lee. Lee wrote his thoughts on this issue in a letter to James Madison.

From Richard Henry Lee to James Madison, November 26, 1784

... I conceive that the Gen. Assessment [bill] and a wise digest of our militia laws are very important concerns: the one to secure our peace and the other our morals.... [T]he experience of all times shows Religion to be the guardian of morals—and he must be a very inattentive observer in our Country, who does not see that avarice is accomplishing the destruction of religion, for want of a legal obligation to contribute something to its support. The Declaration of Rights, it seems to me, rather contends against forcing modes of faith and forms of worship, than against compelling contribution for the support of religion in general. [The bill does not violate Article XVI of the Declaration of Rights.]

In late November and December 1784, the General Assembly started to receive petitions from citizens opposed to a bill on taxation for support of religious education. In response to this pressure, proponents of the bill modified it, so that no one would be required to pay taxes to support a religion in which he did not believe. James Madison,

however, was not moved to change his mind about the bill and called it "obnoxious on account of its dishonorable principle and dangerous tendency."

Nonetheless, the bill passed its second reading by a slim vote of 44–42. But the momentum was on the verge of changing in Madison's favor.

When the bill came up for its third reading on December 24, the delegates moved to postpone the reading until October 1785, at the next session of the General Assembly. Furthermore, the delegates resolved that "the said Bill ... be published in handbills ... and distributed ... and that the people be requested to signify their opinion respecting the adoption of such a bill, to the next session."

Madison's Petition for Religious Freedom

Madison was delighted. With time on his side, he and his allies could influence a public outcry against the bill for state support of religious education and defeat it. Madison's supporters asked him to state their case against the assessment bill in a document that could be circulated among the citizens of Virginia and submitted to the General Assembly at its next meeting. Madison agreed and wrote *A Memorial and Remonstrance* against religious assessments, which was printed and distributed throughout Virginia.

The "Remonstrance" includes fifteen arguments against the assessment bill. Madison emphasized the dangers to individual rights posed by civil interference in religious matters; and he pointed to threats to religion from close affiliation with government. He urged separation of church and state.

Madison wrote about *A Memorial and Remonstrance* in a letter to Thomas Jefferson (August 20, 1785): "The opposition to the general assessment [bill] gains ground. At the instance of some of its adversaries I drew up the remonstrance herewith enclosed. It has been sent [throughout the state] and I am told will be pretty extensively signed." People were asked to sign copies of the "Remonstrance" and send them to the next session of the General Assembly. (See the abridged and annotated copy of the document, which follows. Statements in brackets are annotations on the particular parts of the document.)

TO THE HONORABLE
THE GENERAL ASSEMBLY OF THE
COMMONWEALTH OF VIRGINIA
A MEMORIAL AND REMONSTRANCE
[June 20, 1785]

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion," and conceiving that the same if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill.

1. Because, we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence" [Article XVI, Virginia Declaration of Rights, 1776]. The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.... We maintain, therefore, that in matters of religion, no man's right is abridged by the institution of Civil Society, and that religion is wholly exempt from its cognizance. [Religious liberty is a right of individuals that cannot be abridged. So, the practice of religion should be a private matter and exempt from secular authority.]

2. Because, if Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body.... Their jurisdiction is both derivative and limited; it is limited with regard to the co-ordinate departments [of the government], more necessarily is it limited with regard to the constituents [the people of the state]. The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves. [The legislature has no right to meddle in religious beliefs and practices.]

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of Citizens, and one of the noblest characteristics of the late Revolution. The free men of America did not wait till usurped power had strengthened itself by exercise and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever? [Even the smallest infringement of the individual's religious liberty must be prevented. This should be done to prevent small abuses of individual rights from becoming larger and more dangerous to the preservation of religious liberty.]

4. Because, the Bill violates that equality which ought to be the basis of every law.... If "all men are by nature equally free and independent," [Article I, Virginia Declaration of Rights] all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore, retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of Religion according to the dictates of Conscience," [Article XVI, Virginia Declaration of Rights]. Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to man, must an account of it be rendered. As the Bill violates equality by subjecting some to peculiar burdens, so it violates the same principle, by granting to others peculiar exemptions.... [Equality in the free practice of religion means that each person has the same right to believe and worship, or not worship, as the individual chooses. Government support of religion violates the basic principle of equality before the law by favoring some individuals and groups over others.]

5. Because, the Bill implies either that the Civil Magistrate is a competent

Judge of Religious Truth; or that he may employ Religion as an engine of Civil policy.... [Government officials cannot properly decide among alternative views of truth in religious matters. So they should not have power to favor one religion over another and to use religion for public political purposes.]

6. Because, the establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world: it is a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the suppport of human laws, but in spite of every opposition from them.... [Christianity does not need the support of a government for its preservation or practice. The value of this religion is independent of the policies of a civil government.]

7. Because, experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation.... [Examples in history show that government aid to and involvement in religion has often corrupted and otherwise hurt the cause of religion.]

8. Because, the establishment in question is not necessary for the support of Civil government.... What influence in fact have ecclesiastical establishments had on Civil Society? [History indicates that they have often been used to oppress the people and deprive them of their liberty.] [I]n no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries [helpers]. A just Government ... will be best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another. [Government support of religion is not necessary to the security of a free government; and it may be dangerous to order and liberty in a civil society.]

9. Because, the proposed establishment [bill] is a departure from that generous policy, which offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens.... [The bill] is ... a signal of persecution. It [withholds] the equal rank of Citizens [from] all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerence. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon on our Coast, warning him to seek some other haven, where liberty and [charity] ... may offer a more certain repose from his Troubles. [The bill, if enacted, would discourage immigration by people seeking relief from tyranny in other countries.]

10. Because, it will have a like tendency to banish our Citizens. The allurements presented by other situations are every day thinning their number. [The assessment bill, if passed, would influence people to move away from Virginia.]

11. Because, it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion has produced among its several sects.... The very appearance of the Bill has [encouraged religious conflict].... What mischiefs may not be dreaded, should this enemy [the bill] to the public quiet be armed with the force of law? [Laws that favor one religion over another encourage strife among religious groups.]

12. Because, the policy of the Bill is adverse to the diffusion of the light of Christianity.... Instead of Levelling as far as possible, every obstacle to the victorious progress of Truth, the Bill with an ignoble and unchristian timidity would circumscribe it with a wall of defence against the encroachments of error. [The assessment bill, if enacted, would discourage contact between believers and non-believers. This would hinder the spread of religion to the latter.]

13. Because, attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of Citizens, tend to enervate the laws [make them unenforceable] in general, and to slacken the bands of Society [weaken the authority that holds a community together]. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the Government, on its general authority? [Attempts to enforce a religious assessment that is unpopular among many citizens will have the unhappy result of undermining respect for government and law.]

14. Because, a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens, and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured.... [If the majority of the people do not clearly support this bill, then it should not be enacted. There is not likely to be undisputed evidence that an overwhelming majority of the people favor the bill.]

15. Because, finally, "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience" is held ... the same ... with all our other rights.... Either then, we must say that the Will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred. Either we must say that they may control the freedom of the press, may abolish the Trial by Jury [and take away other rights guaranteed by the State Constitution] or, we must say, that they have no authority to enact into law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority. And that no effort may be omitted on our parts against so dangerous an usurpation, we oppose to it, this remonstrance.... [Since religious liberty has the same validity as other natural rights of the individual, the government has no authority to abridge this right. Either we must grant that the government has authority to take away all inherent rights of the people, or we must deny that the government has authority to take away or diminish the inherent right of individuals to religious liberty.]

Outcome of the Conflict Over Religious Freedom

Members of the General Assembly saw many petitions when they convened in October 1785. About 1,200 signatures were attached to pro-assessment petitions. More than 10,000 Virginians signed petitions against the General Assessment bill. Most of the anti-assessment petitions either included Madison's statements or reflected them. Thus, at the outset of the autumn session of the General Assembly, the fate of the bill was sealed. It was referred to committee and never reported back to the General Assembly. Madison had won his campaign to defeat this proposal for state support of religion.

Madison quickly pushed for passage of Thomas Jefferson's bill for Establishing Religious Freedom, which had been introduced initially in 1779. Again he was successful and Jefferson's bill became law.

Act For Establishing Religious Freedom, January 19, 1786

Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

Madison reported these victories for religious liberty to his friend Jefferson in Paris.

From James Madison to Thomas Jefferson, January 22, 1786

The steps taken throughout the Country to defeat the Genl. Assessment [bill] had produced all the effect that could have been wished. The table was loaded with petitions & remonstrances from all parts against the interposition of the Legislature in matters of Religion. [The essential parts of your bill on Religious Freedom] passed without a single alteration, and I flatter myself have in this Country extinguished forever the ambitious hope of making laws for the human mind. . . .

An even larger victory for religious freedom loomed ahead. In 1789, James Madison attended the first session of Congress under the Constitution of 1787. He had been elected to the House of Representatives from his district in Virginia. Madison proposed addition of a Bill of Rights to the Constitution, which included the principle of religious freedom that he and Jefferson had supported in Virginia.

The following statement is Madison's first draft of a constitutional amendment on religious freedom: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext abridged."

Madison's original draft was revised by a committee of Congress to the familiar words of Amendment I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

Madison's essential ideas on religious freedom, first advanced in 1776 at Virginia's Revolutionary Convention, had prevailed. They were included partially in the first Constitution of the free state of Virginia. They were eloquently stated in *A Memorial and Remonstrance*, which was used to defeat legislation to limit religious liberty. They were embodied in Jefferson's *Act for Establishing Religious Freedom*. And finally, they were enshrined in the Constitution of the United States.

Reviewing Facts and Main Ideas

1. What important events in the history of religious freedom are associated with each of the following dates. Identify one or two events for each date. Why is each event important in the history of religious freedom?
   a. 1776
   b. 1785
   c. 1786
   d. 1789
   e. 1791
2. What was Patrick Henry's General Assessment bill?
3. Who were major supporters and opponents of Henry's General Assessment bill?
4. What were three main ideas of supporters of Henry's General Assessment bill?
5. What were three main ideas of opponents of Henry's General Assessment bill?
6. What happened to the General Assessment bill at each of the points indicated below:
   a. First reading of the bill, November 1784.
   b. Second reading of the bill, December 1784.
   c. Postponement of third reading of the bill, December 1784.
   d. Public examination and discussion of the bill, January to October 1785.
   e. Convening of fall session of the General Assembly, October 1785.
   f. Passage of the bill for Establishing Religious Freedom, January 1786.

Examining Evidence in Documents

1. Review the letter from Richard Henry Lee to James Madison to find answers to these questions.
   a. Why did Lee support the General Assessment bill?
   b. Why did Lee claim that the General Assessment bill did not contradict the Virginia Declaration of Rights?
2. Review *A Memorial and Remonstrance* to find answers to the following questions.
   a. What was the overriding purpose of Madison in writing this document?
   b. According to Madison, why would Henry's General Assessment bill have a harmful effect on the rights and liberties of individuals? See the following sections of *A Memorial and Remonstrance*: Nos. 3, 4, 5, 9, 15.
   c. According to Madison, why would Henry's General Assessment bill not be necessary for the well-being of the state government and community in Virginia? Why could it even be harmful to them? See the following sections of *A Memorial and Remonstrance*: Nos. 8, 10, 11, 13.
   d. According to Madison, why would Henry's General Assessment bill have a harmful effect on religious institutions in Virginia? See the following sections of *A Memorial and Remonstrance*: Nos. 6, 7, 12.
3. Review the Virginia Act for Establishing Religious Freedom to find answers to the following questions.
   a. What is the main idea of this Act?
   b. What are the similarities between this Act and sections 1 and 4 of *A Memorial and Remonstrance*?
   c. What are the similarities between this Act and the principle of religious freedom in Amendment I of the U.S. Constitution?

Making Judgments about Ideas in Documents

1. There are fifteen sections in *A Memorial and Remonstrance*. Which section includes the most important idea about religious freedom as this principle applies to the United States today? Be prepared to provide at least two reasons in support of your judgment.

2. Compare the Virginia Act for Establishing Religious Freedom with (a) Madison's original draft of an amendment to the U.S. Constitution on religious liberty and (b) the part of the Constitution's First Amendment that guarantees religious freedom. What are the similarities and differences in these statements about religious freedom? Which statement of the principle of religious liberty do you prefer? Why?

PART II

Introduction

The Separation of Powers: John Adams' Influence on the Constitution

Teaching Plan for Lesson 2

Lesson 2: John Adams and Separation of Powers

II
Introduction

John Adams of Massachusetts was so thoroughly American in his loyalties and actions that he wished to be called "John Yankee." In this way, he sought to distance himself from a symbol of Great Britain, "John Bull." His deep roots in the "New World" of North America, however, were planted by ancestors from the "old country" of England. The Adams family in America was founded by John's great-great grandfather, Henry Adams, who had emigrated from England to Braintree, Massachusetts in 1640.

John Adams enlisted early in the cause of American independence from Britain, and in 1774 he served as a delegate from Massachusetts in the first Continental Congress. As a member of the second Continental Congress, 1775–1777, Adams worked to persuade hesitant colleagues to declare the independence of the United States of America. In 1783 he was part of the American delegation that negotiated the Treaty of Paris, which successfully concluded the American War of Independence.

During the framing and ratifying of the Constitution in 1787, Adams was abroad representing his country at the Court of St. James in England. Despite his absence from the Federal Convention, Adams had a big influence on the contents of the new Constitution, especially its separation of powers into three branches (legislative, executive, and judicial) and the further division of the legislature into two parts—a House of Representatives and a Senate.

In 1776 John Adams wrote a pamphlet, *Thoughts on Government*, which was widely read by Americans engaged in making constitutions for their newly independent state governments. He also used these ideas in writing the Massachusetts Constitution. Adams' concepts on constitutional government were accepted by civic leaders throughout the United States. Most importantly, they were applied to the making of constitutions in the American states and to the framing of the U.S. Constitution.

Adams' concept of separation of powers influenced the delegates in the Federal Convention. Gregg L. Lint and Richard Alan Ryerson, experts on the constitutional thought of John Adams, claim that "his political ideas, especially concerning the separation of powers, had helped shape the thought of every delegate to that epochal meeting. For it was Adams, more than any other of the nation's founders, who had thought, spoken, and written in defense of this concept for over twenty years."

Part II includes an essay by Lint and Ryerson, "The Separation of Powers: John Adams' Influence on the Constitution." These two authors examine the development of John Adams' ideas on constitutional government from the 1760s through the 1780s. They emphasize his commitment to limited government and the rule of law, and show how Adams' concept of separation of powers was at the core of his model of republican government. The essay by Lint and Ryerson is followed by a Teaching Plan and a Lesson for high school students: "John Adams and Separation of Powers." The Teaching Plan and Lesson provide materials for high school history and government courses on core ideas and documents in the civic heritage of the United States.

DOCUMENTS

The Separation of Powers: John Adams' Influence on the Constitution

by GREGG L. LINT AND RICHARD ALAN RYERSON

John Adams, revolutionary leader, diplomat, first vice-president of the United States, and its second president, did not attend the Constitutional Convention. Serving in London as the United States' first minister to Great Britain, he could have no direct impact on the outcome of the discussions in Philadelphia. As the author of *Thoughts on Government* (1776) and the Massachusetts Constitution of 1780, however, his political ideas, especially concerning the separation of powers, had helped shape the thought of every delegate to that epochal meeting. For it was Adams, more than any other of the nation's founders, who had thought, spoken, and written in defense of this concept for over twenty years.

The Student of the British Constitution

John Adams came to his views on government from his beliefs about the nature of human beings. Throughout his long life, Adams remained firmly convinced that all men were subject to inordinate self-love. This invariably created a keen desire for unmerited respect, fame, and power that could ruin any government. In an unpublished newspaper essay written in 1763, when he was only twenty-seven, he opened with the maxim, "All men would be tyrants if they could," then portrayed the abuses of unchecked power in the starkest colors, and concluded by expounding the practical implications of this human condition:

> *No simple Form of Government can possibly secure Men against the Violences of Power. Simple Monarchy will soon mould itself into Despotism, Aristocracy will soon commence an Oligarchy, and Democracy will soon degenerate into an Anarchy . . . and every one of these will soon mould itself into a system of subordination of all the moral Virtues, and Intellectual Abilities, all the Powers of Wealth, Beauty, Wit, and Science, to the wanton Pleasures, the capricious Will, and the execrable Cruelty of one or a very few.*
>
> **"An Essay on Man's Lust for Power", August 1763, *The Papers of John Adams*, vol. 1, p. 83.**

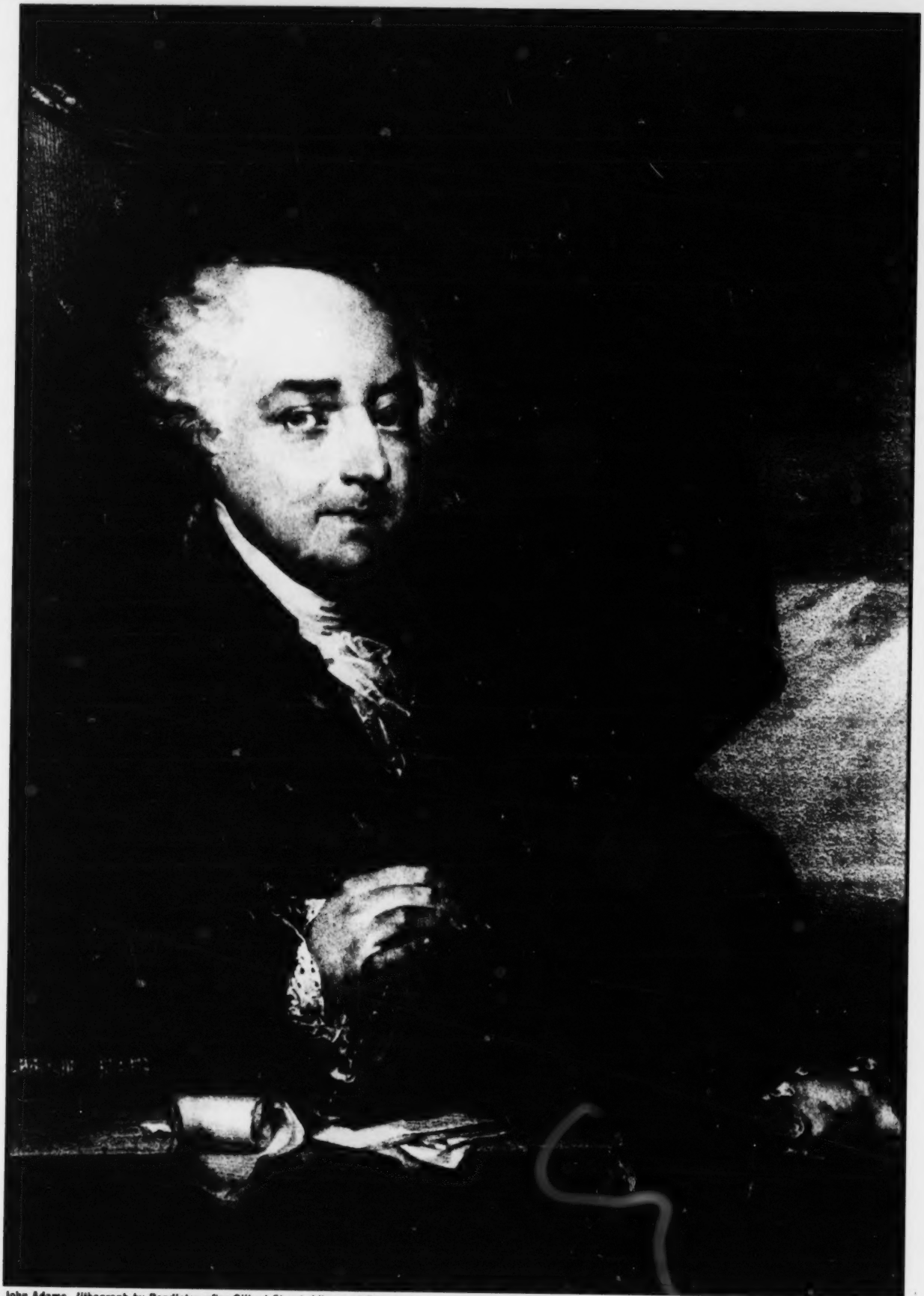
Long after the American Revolution was over, Adams re-read this youthful essay and commented: "This last Paragraph has been the Creed of my whole Life and is now [1807] as much approved as it was when it was written."

In 1763, however, Adams believed that under the British constitutional system the people of New England, armed with their effective system of public education and their active dissenting ministry, could defend their rights against any attack. The Massachusetts charter of 1691, he explained, had placed an important power in the hands of the common voter:

> *We have a check upon two branches of the legislature, as each branch has upon the other two; the power I mean of electing, at stated periods,* one *branch [the House of Representatives], which branch has the power of electing another [the Council]. It becomes necessary to every subject then, . . . to examine and judge for* himself *of the* tendency *of political* principles *and* measures. *Let us examine them with a* sober, *a* manly, *a* British, *and a* Christian *spirit.*
>
> **"U," in the *Boston Gazette*, August 29, 1763, *The Papers of John Adams*, vol. 1, p. 81.**

In John Adams' earliest political thought, Britain's constitution and its Massachusetts descendant needed no reformation:

> *Were I to define the British constitution, therefore, I should say it is a limited monarchy, or a mixture of the three forms of government commonly known in the schools, reserving as much of the monarchical splendor, the aristocratical independency, and the democratical freedom, as are necessary, that each of these powers may have a controul both in legislation and execution, over the other two, for the preservation of the subjects liberty. . . . And it is [the] reservation of fundamentals, of the right of giving instructions [to representatives], and of new elections, which creates a popular check, upon the whole government which alone secures the constitution from becoming an aristocracy, or a mixture of monarchy and aristocracy only.*
>
> ***Boston Gazette*, Jan. 27, 1766, *The Papers of John Adams*, vol. 1, pp. 167-168.**



John Adams, *lithograph by Pendleton after Gilbert Stuart. Library of Congress.*

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The preservation of this constitutional system, however, depended upon each branch of government jealously guarding the precise, formal boundaries of power that fixed its proper constitutional position relative to the other two branches. As the imperial conflict between Great Britain and her colonies grew, John Adams began to study the historical development of Britain's complex, largely unwritten constitution. He soon discovered that the constitutional forms upon which liberty so much depended were often newer and less secure in England, and in America, than he had supposed. In early 1773 he wrote a series of learned newspaper essays on "The Independence of the Judges," in which he demonstrated that the Crown appointment of judges on terms of good behavior, making them immune from removal by arbitrary executives or tyrannical kings, was neither ancient, nor protected by the common law, but was of recent institution, and thus relatively weak and subject to attack by unprincipled Crown officials or members of Parliament.

The mounting conflict between Massachusetts' patriot leaders and Great Britain further refined both John Adams' appreciation of a balanced constitution and his awareness of its vulnerability in British North America. In January 1773 he was chosen to draft the response of the Massachusetts House of Representatives to Governor Thomas Hutchinson's sweeping assertion of Parliamentary supremacy in America. The reply denied this supremacy in the strongest terms yet used in America, but it concluded by accepting the necessity of maintaining certain powers of the Crown.

> *And should the People of this Province be left to the free and full Exercise of all the Liberties and Immunities granted to them by [the] Charter [of 1691], there would be no danger of an Independance on [i.e. from] the Crown. Our Charters reserve great Power to the Crown in its Representatives [the royal governors], fully sufficient to balance, analagous to the English Constitution, all the Liberties and Privileges granted to the People.*
>
> **Massachusetts *House Journal*, 1772–1773, pp. 178-190, *The Papers of John Adams*, vol. 1, pp. 329-30.**

At the height of their passion against an overbearing Parliament and a host of arbitrary and corrupt ministers and officers of the Crown, John Adams and his colleagues firmly believed that the local components of Massachusetts' government, popular and legislative, must be balanced by the more cosmopolitan powers of Crown prerogative. Only this balance could insure that the democratic elements of their constitution would not overwhelm its monarchical and aristocratic elements, causing the government to degenerate into anarchy.

The Revolutionary Lawgiver

The events of the next two years, however, permanently transformed John Adams' political world, and required a new approach to America's constitutional problems. In 1774 the British government, in response to the Boston Tea Party, closed the port of Boston, revised the Massachusetts Charter by parliamentary statute, and sent a military governor with an army of occupation to the province. Britain's sudden, unilateral alteration of its constitutional relationship to Massachusetts, followed by America's successful establishment of provincial congresses and the First Continental Congress, soon convinced Adams that the monarchical and aristocratic elements of a British-style constitution need not be centered in England, nor based on an inherited monarchy and a landed, titled aristocracy.

As the imperial crisis escalated toward war in the winter and spring of 1775, John Adams turned anew to those seventeenth-century English authors who had developed the revolutionary principles that America's patriot leaders held so sacred: Algernon Sidney, John Locke, and above all James Harrington, whose *Commonwealth of Oceana* (1656) had proposed an elaborate republic to replace England's recently abolished monarchy. In twelve scholarly newspaper essays written on the eve of the battles at Lexington and Concord, John Adams, as "Novanglus," moved into uncharted constitutional waters. By March, he had come to view the British constitution in a radically new light:

> *If Aristotle, Livy, and Harrington knew what a republic was, the British constitution is much more like a republic than an empire. They define a republic to be* a government of laws, and not of men [*from Harrington*, Oceana]. *If this definition is just, the British constitution is nothing more or less than a republic, in which the*

Birth place of John Adams. Library of Congress.

king is first magistrate. This office being hereditary, and being possessed of such ample and splendid prerogatives, is no objection to the government's being a republic, as long as it is bound by fixed laws, which the people have a voice in making, and a right to defend.

"Novanglus," *Boston Gazette*, March 6, 1775. *The Papers of John Adams*, vol. 2, p. 314.

Once he had seized this new vision of what a just constitution might be, John Adams turned his thoughts increasingly to the plight of America's royal provinces. Suddenly stripped, by the rapidly spreading rebellion, of royal officials who could command the respect of their people, these colonies were in desperate need of executive and judicial authority that could maintain public order and allow the war with Britain's invading armies to proceed. Provincial leaders from north and south soon beseiged the Continental Congress for guidance. That summer and fall John Adams, who represented Massachusetts in Congress, urged his colleagues to advise his home province, and then New Hampshire, to set up new governments without Crown authority, although he did not yet advocate formal independence from Great Britain. Congress, to Adams' exasperation, refused to advise these bold measures, but the debates on these occasions set him to thinking hard about the best form for new American constitutions. By November 1775, John Adams was ready to step forward as America's first lawgiver.

The immediate occasion of Adams' debut as a constitution-maker was an evening's conversation with his Virginia colleague, Richard Henry Lee, who wanted Adams' thoughts as a guide to reforming Virginia's government to meet the challenge of the Revolutionary crisis. But Adams' carefully phrased letter of the following day reveals a mind long absorbed with the details of constitutional structure. Many of these details were simply taken from the Massachusetts Charter of 1691, which Adams had always revered, but the heart of his letter lay in several clauses in which he set forth his broader convictions about constitutional government:

John Adams to Richard Henry Lee, Philadelphia, November 15, 1775 *(The Papers of John Adams, vol. 3, pp. 307-8.)*

A Legislative, an Executive and a judicial Power comprehend the whole of what is meant and understood by Government. It is by balancing each of these Powers against the other two, that the Effort in human Nature towards Tyranny can alone be checked and restrained and any degree of Freedom preserved in the Constitution.

Let the Governor, Council, and House be each a distinct and independant Branch of the Legislature, and have a Negative on all Laws.

Let all Officers and Magistrates civil and military, be nominated and appointed by the Governor, by and with the Advice and Consent of his Council.

Let the Judges, at least of the Supream Court, be incapacitated by Law from holding any Share in the Legislative or Executive Power. Let their Commissions be during good Behaviour, and their Salaries ascertained and established by Law.

In establishing such a government, Adams initially preferred that the popularly elected House choose the Council, and that both jointly choose the Governor, but he added that the legislature, "if it is thought more beneficial," might leave the election of the Governor and Council to the people "as soon as affairs get into a more quiet Course." In other passages, too, he stressed the need to adapt

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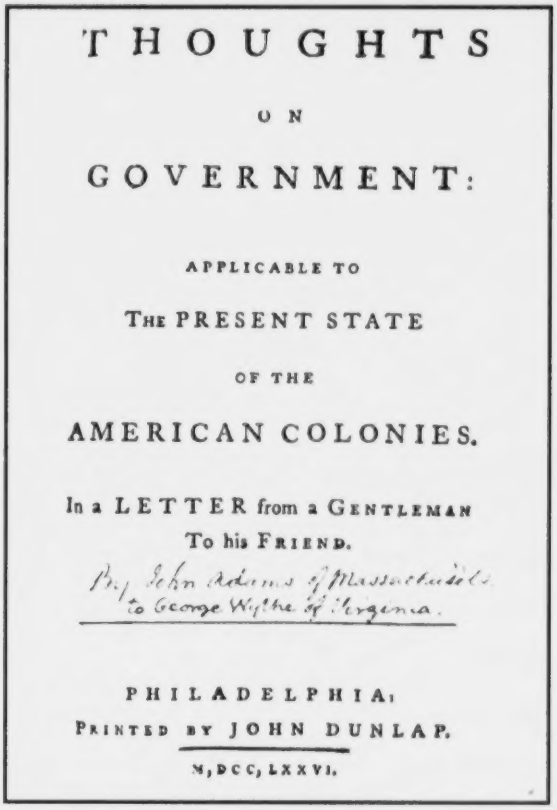


THOUGHTS

ON

GOVERNMENT:

APPLICABLE TO

THE PRESENT STATE

OF THE

AMERICAN COLONIES.

In a LETTER from a GENTLEMAN

To his FRIEND.

By John Adams of Massachusetts
to George Wythe of Virginia.

PHILADELPHIA:

PRINTED BY JOHN DUNLAP.

M, DCC, LXXVI.

Library of Congress.

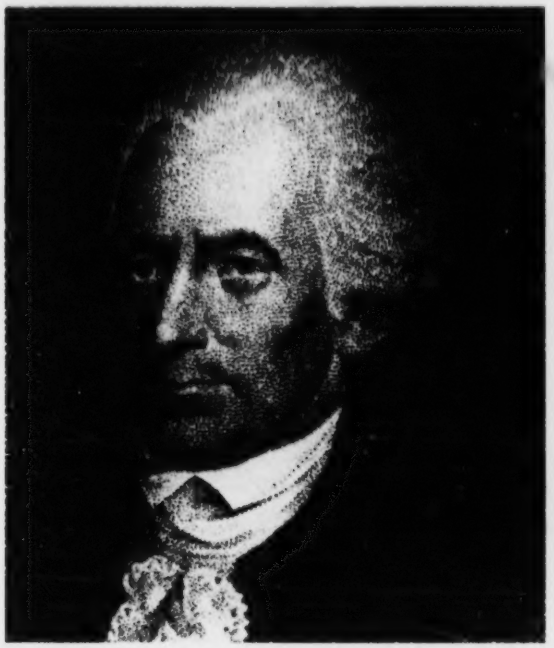
a constitution to the needs of a particular people, and he imagined that thirteen provinces might have thirteen different constitutions. On the separation and balance of powers, however, Adams stood firm, in this letter and in every succeeding statement to the end of his life.

The model of government presented in his letter to Lee became the basis for John Adams' first celebrated and widely influential constitutional plan, his *Thoughts on Government*, which appeared in Philadelphia in April 1776. Adams insisted on publishing this pamphlet anonymously, although the secret was not kept long. In May he dismissed his essay, which was intended as a practical guide for several colonies that were about to frame new constitutions, as a "hasty hurried Thing and of no great Consequence." But the tract is a succinct, well-written statement of his views, in 1776 and for decades thereafter, of how a government ought to be constructed. The model of government in *Thoughts* followed his November letter to Lee exactly, but Adams added his reasons for preferring each structural feature of his plan. He began by flatly asserting that "the blessings of society depend entirely on the constitution of government"; some models would advance human happiness, others would prevent it. Moreover, echoing his "Novanglus" letters of 1775, he declared that "there is no good government but what is Republican," and, quoting Harrington again, "the very definition of a Republic is 'an Empire of Laws, and not of men'."

Turning to his model, Adams set at its center a representative Assembly that "should be in miniature, an exact portrait of the people at large. It should think, feel, reason, and act like them." This Assembly, however, must never be allowed to become the whole government—as some Americans were then inclined to make their reformed legislatures, and as Pennsylvanians very nearly did five months later, following the Declaration of Independence. Any all-powerful legislature would soon be subject "to all the vices, follies and frailties of an individual," with no controlling, corrective power. Such an Assembly would grow ambitious and avaricious in the absence of any opposition, and it was, in any event, structurally unsuited for executive and judicial roles.

Moreover, Adams declared, even to place all legislative power in one house would concentrate that power too strongly; a second, upper house, or Council, was needed "as a mediator between the two extreme branches of the legislature, that which represents the people and that which is vested with the executive power." (Adams considered the governor a part of the legislative power because he could sign or veto legislation.) And that executive, Adams believed, ought to have an absolute veto over the Assembly and Council as a final check upon the legislative power. (This last opinion was almost universally unpopular in America, but Adams never retreated from it.) Adams again favored the election of the Council by the Assembly, and of the Governor by both houses, as he had in November, but he was not concerned that any province might prefer to choose the Governor and Council by popular vote, so long as they were granted the independence that they needed to balance the power of the Assembly. Finally, he insisted that "the judicial power ought to be distinct from both the legislative and the executive, and independent upon [of] both, that so it may be a check upon both, as both should be checks upon that."

The impact of John Adams' brief pamphlet was immediate and widespread. Of the eight constitutions that were framed in the year following its appearance, *Thoughts on Government* directly influenced three, those of New Jersey, Virginia, and North Carolina, and probably two others, in Maryland and Delaware. Adams himself felt that New York's Constitution of 1777 showed the stamp of his views. Only Pennsylvania and Georgia emphatically rejected his model. While it is often observed



Richard Henry Lee, *engraving by P. Maverick from a drawing by Longacre. Library of Congress.*

James Harrington. *Library of Congress.*

that the earliest state constitutions created weaker executives and, in a few cases, more dependent judiciaries than either their colonial antecedents or the revised constitutions that succeeded them after the war with Britain ended, they had far stronger executives and more independent judiciaries than many leaders in each of these states desired. The considerable success of those favoring the separation and balance of powers, in the strongly anti-executive political climate of 1776, owes greatly to John Adams.

The Massachusetts Constitution

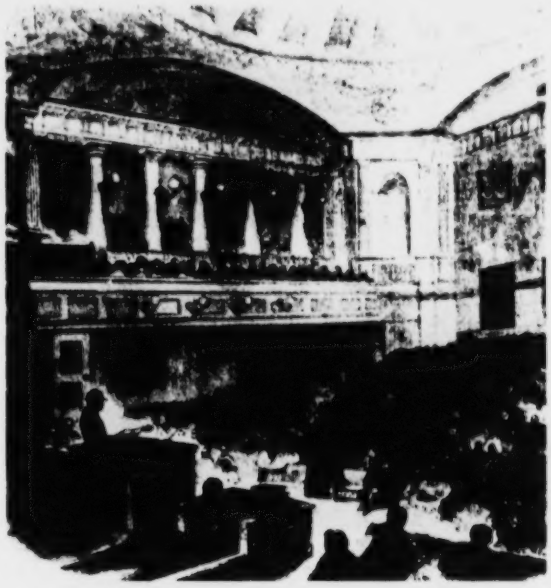
It was John Adams' firm conviction, however, that the new American constitutions of 1776–1777 were all imperfect in greater or lesser degree. Few of them had been framed by special conventions elected for that purpose, many restricted their judges to set terms in office, many lacked a bill of rights to protect the citizen, and nearly all had weak executives. And not one had ever been ratified by the people. With the exception of a bill of rights, Adams had recommended each of these features, either in *Thoughts on Government*, or to his colleagues in Congress.

In 1779, after three years of constant congressional and diplomatic labors during which he had little occasion to think or write about constitutions, John Adams unexpectedly got his grand chance to show Americans how a constitution should be written. In September of that year he was chosen to draft a constitution for a convention especially elected to that role by the voters of Massachusetts. Adams did not attempt to translate his *Thoughts on Government* directly into a working constitution, however, for the past three years had seen several important constitutional developments. First, Virginia, and then Pennsylvania, Maryland, and North Carolina, had incorporated highly popular bills of rights into their constitutions, and Adams quickly saw how useful a bulwark against tyranny they could be. Second, where Adams had been unsure, in *Thoughts*, whether Americans could effectively choose senators, councilors, and governors, as well as assemblymen, by popular vote during the unsettled conditions of war, experience had shown that they could—and that they would not accept any other method of electing them. Finally, Massachusetts' voters had already rejected one constitution, drawn by the legislature, that had not carefully attended to the voters' wishes.

Adams remained convinced, however, that three hard years of war had only proven his central contentions: legislative power must be divided between two houses, governors must be independent of legislatures, with a veto and strong appointment powers, and judges must hold their offices for unlimited tenure, on good behavior. In the text that he presented to the drafting committee, which was reported to the full convention with little alteration, he forthrightly declared his political faith:

> *In the government of Massachusetts, the legislative, executive, and judicial power, shall be placed in separate departments, to the end that it might be a government of laws and not of men.*
>
> Introduction to the Frame of Government, *Report of a Constitution* . . . (Boston, 1779), p. 15.

The whole convention then took this language and recast it in an even more compelling form, as Article XXX (the last) of the Declaration of Rights:



Massachusetts House of Representatives, 1773. (251-4.1 Box 2, Archives of The Commonwealth, Boston, Mass.)

In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative or judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Journal of the Convention **(Boston, 1832), p. 227.**

In drafting this constitution, Adams took a gamble. The towns had emphatically rejected the proposed constitution of 1778, objecting in several instances to its property qualifications for those voting for senators, and to the appointive powers of the governor and senate. Yet Adams, after studying the 1778 document carefully, made the governor more powerful and independent, strengthened the senate, called more clearly for a supreme judicial court, and instituted property qualifications for those voting for both assemblymen and senators. At the same time, he satisfied other objections to the 1778 constitution, primarily by writing a comprehensive bill of rights and by more carefully separating the legislative, executive, and judicial roles into distinct departments, which many Massachusetts voters desired as keenly as did Adams himself. By heading the sections of the text that described each department's powers with prominent titles, Adams invited each voter to visualize the principles of separation and balance. His gamble, and that of the convention, paid off. The Massachusetts Constitution of 1780, the first in America to be submitted to the people for ratification, was approved, despite severe criticism of several of its sections. Remarkably, it survives to this day, the oldest functioning written constitution in the world.

The Defender of Balanced Republican Government

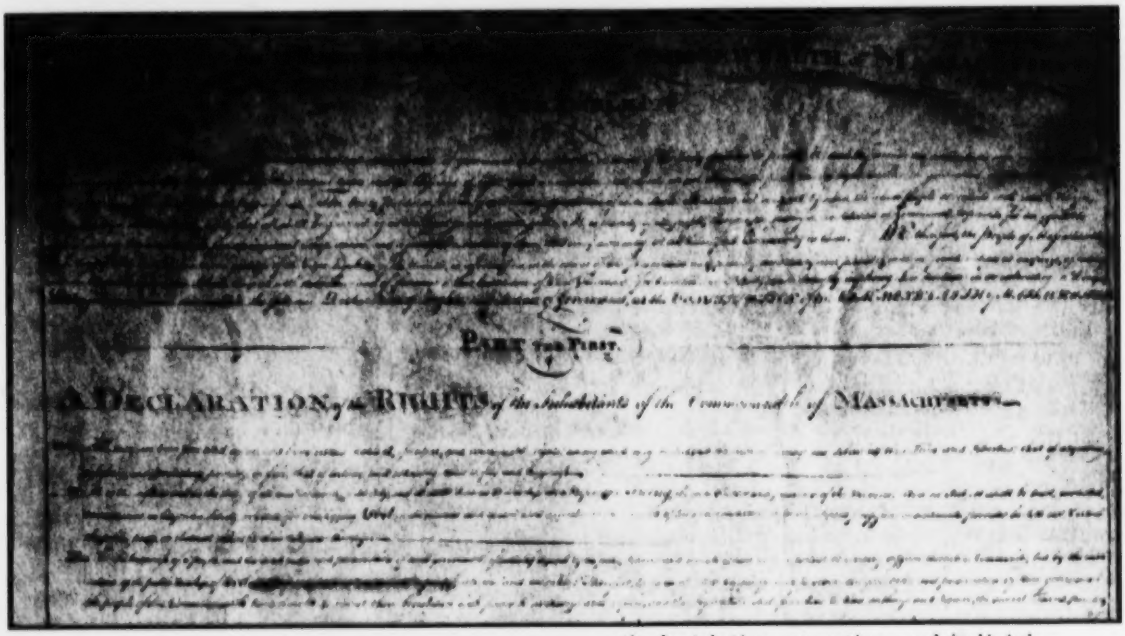
For seven years following his authorship of Massachusetts' new constitution, John Adams' total involvement in diplomacy kept him from writing anything about constitutions beyond occasional remarks in private letters. When he next turned his attention to political theory, in the fall of 1786 while still in London, he at first had a European audience in mind, rather than an American one. His three-volume *Defence of the Constitutions of the United States* (1787-88) was an extended survey of the ancient origins and modern development of balanced republican government in Europe. It was initially designed to convince Europeans, and especially the Dutch, who were just then attempting a political revolution, that America's *state* constitutions, particularly those whose design he had influenced in 1776, and his own Massachusetts Constitution of 1780, represented the highest development of the European political tradition and were the only sound models for new constitutions. As he neared the completion of the first volume of the *Defence*, however, Adams learned of Shays' Rebellion in Massachusetts. Fearful that his beloved constitution might be destroyed in the ensuing civil strife, he hastily added a few passages to the text that spoke directly to Americans, so that he might call them back to the constitutional restraint of 1780.

This first volume of the *Defence* reached Philadelphia in the spring of 1787, just as the delegates were gathering for the Constitutional Convention. It was immediately and widely read and, for the most part, approved. But Adams' latest work did not offer the founding fathers fresh advice or new ideas for constructing a constitution, nor had Adams intended that it should. Writing to John Jay on 22 September 1787, he remarked:

[The delegates] want no assistance from me in forming the best possible plan; but they may have occasion for underlaborers, to make it accepted by the people. . . . One of these underworkmen, in a cool retreat, it shall be my ambition to become.

C. F. Adams, ed., *Works of John Adams* (Boston, 1853), vol. 8, p. 452.

The *Defence*, both in its first and subsequent vol-


PART the FIRST.

A DECLARATION of the RIGHTS of the Inhabitants of the Commonwealth of MASSACHUSETTS

Massachusetts Constitution of 1780. (11A-1-3 Notebook 2, Archives of The Commonwealth, Boston, Mass.)

umes, was as its title suggests an explication of what American constitutional thinkers had already done. Adams, who referred only rarely to the Convention, whether before, during, or immediately after its sitting, seemed largely unaware of that gathering's potential to introduce novel constitutional ideas into the American political tradition. Adams' constitutional writings before 1780 had an enormous impact upon the Convention, as the baseline of most delegates' political thought, absorbed through their state constitutions; but the influence of his *Defence*, in either the Convention or the ratification debates that followed, is both difficult to assess and far less important. The Massachusetts Constitution of 1780 is crucial to an understanding of the U.S. Constitution; the *Defence of the Constitutions of the United States* is largely peripheral to that document.

As his letter to Jay suggests, however, Adams saw his role as one of supporting and explaining the Constitution, as he did in occasional letters. Upon reading the document in November 1787, he concluded that the president, lacking an absolute veto and forced to face reelection every four years, needed stronger powers to counter-balance the Congress. But he also knew that the federal executive was stronger than the governors of most of the states, and in other respects he was well pleased with the new frame of government. The United States Constitution, with its sharply differentiated two-house legislature, its relatively strong executive, and its independent judiciary, embodied just those principles for which John Adams had striven so faithfully for twenty-five years. To judge the success of his struggle, one need only compare the central principle of his draft version of the Massachusetts Constitution with the opening sentences of the three principal articles of the U.S. Constitution. What in 1779 read:

> *the legislative, executive, and judicial power, shall be placed in separate departments, to the end that [the government of Massachusetts] might be a government of laws and not of men. . . .*

had by 1787 become the familiar:

> *All legislative Powers herein granted shall be vested in a Congress. . . . The executive Power shall be vested in a President. . . . The judicial Power . . . shall be vested in one supreme Court. . . .*

Select Bibliography:

John Adams' constitutional writings through 1776 are in Robert J. Taylor and others, eds., *The Papers of John Adams*, vols. 1-4 (Cambridge, Mass., Harvard University Press, 1977, 1979). The text of the Massachusetts Constitution of 1780, with accompanying documents, appears in Robert J. Taylor, ed., *Massachusetts, Colony to Commonwealth* (New York, W. W. Norton, 1961). The best analysis of the constitutional thought of the Revolutionary era is Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, University of North Carolina Press, 1969). Valuable works on John Adams' constitutional ideas are Correa M. Walsh, *The Political Science of John Adams* (New York, G. P. Putnam's Sons, 1915); Edward Handler, *America and Europe in the Political Thought of John Adams* (Cambridge, Mass., Harvard University Press, 1964); and John R. Howe, *The Changing Political Thought of John Adams* (Princeton, Princeton University Press, 1966).

GREGG L. LINT is senior associate editor of The Adams Papers at the Massachusetts Historical Society in Boston, and the author of several articles on the diplomacy of the American Revolution.

RICHARD ALAN RYERSON is editor-in-chief of The Adams Papers, and author of *The Revolution Is Now Begun: The Radical Committees of Philadelphia, 1765-1776* (University of Pennsylvania Press, 1978).

II
Teaching Plan for Lesson 2
John Adams and Separation of Powers

Objectives

Students are expected to

1) identify and understand central ideas of John Adams on constitutional government in the pamphlet, *Thoughts on Government*, and in the Massachusetts Constitution;

2) identify and explain examples of the following concepts in the constitutional thought of John Adams: separation of powers, republican government, rule of law, and popular sovereignty;

3) explain how separation of powers is related to the other core ideas in the constitutional thought of John Adams;

4) explain how Adams' concept of separation of powers is exemplified in the Massachusetts Constitution and Articles I-III of the 1787 Constitution of the United States;

5) analyze and appraise the constitutional thought of John Adams in two documents: *Thoughts on Government* and the Constitution of Massachusetts.

Preparing to Teach the Lesson

Read the essay by Gregg L. Lint and Richard Alan Ryerson, "The Separation of Powers: John Adams' Influence on the Constitution." Pay special attention to these parts of the essay: (a) Adams' letter to Richard Henry Lee on separation of powers in government, (b) the discussion of Adams' model for constitutional government in the 1776 pamphlet, *Thoughts on Government*, (c) the examination of Adams' contributions to the Massachusetts Constitution, and (d) the assessment of Adams' influence on the contents of the 1787 Constitution.

Read the Lesson on "John Adams and Separation of Powers." Pay special attention to the two documents featured in this Lesson: excerpts from *Thoughts on Government* and the Massachusetts Constitution.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Write the name John Adams on the chalkboard and show the picture of Adams to students, which is included with the essay by Lint and Ryerson. Ask students what they know about Adams and his contributions to the founding of the United States from the 1770s through the 1790s. It is likely that students will know that Adams served as the first Vice President and second President of the United States, and that he was involved in events leading to the independence of the United States. However, they may not know that despite his absence from the Federal Convention, Adams influenced the contents of the 1787 Constitution. Ask them how this could be so, and what they think his influence on the Convention was.

After a brief speculative discussion, read the first paragraph of the Lint and Ryerson essay to the students. They assert that Adams influenced the thinking of the delegates to the Federal Convention through his writings on constitutional government and his drafting of the Massachusetts Constitution. Tell students that the remainder of the Lesson treats the constitutional thought of John Adams and its influence on the Federal Convention of 1787.

Developing the Lesson

Ask students to read the Lesson, "John Adams and the Separation of Powers." Tell them to carefully examine excerpts from two documents in this lesson: *Thoughts on Government* and the Massachusetts Constitution.

Require students to prepare answers to the questions and learning activities that follow each of the segments on the documents.

Conduct a document-based discussion of the questions and learning activities. Encourage students to support answers to the questions with evidence from the documents. During the discussion, students should continually refer to the documents to explain and justify their comments and conclusions in this discussion. You should emphasize Adams' concept of separation of powers and its relationship to his concepts of republican government, the rule of law, and popular sovereignty.

Concluding the Lesson

Assign the two sets of questions and activities at the end of the Lesson: (1) "Reviewing Facts and Main Ideas" and (2) "Interpreting and Judging Ideas in Documents."

Conduct a brief recitation on the first set of questions, "Reviewing Facts and Main Ideas." Then divide the class into three groups and assign one of the three items in the second set, "Interpreting and Judging Ideas in Documents," to each of the three groups. For example, assign item 1 to group 1, item 2 to group 2, and item 3 to group 3. Tell each group to conduct its own discussion on the item assigned to it and to prepare to report the conclusions of the group to the full class. Permit these small group discussions to proceed simultaneously for about 10 to 12 minutes.

After each group has had sufficient time to discuss the item assigned to it, have students reassemble for a concluding full-class discussion. Ask one member of each group to report the group's conclusions in response to the item assigned to it. Require other members of the class to listen carefully to each of the three reports, and to raise questions, criticisms, and other comments about each of the reports.

II
Lesson 2
John Adams and Separation of Powers

John Adams missed one of the great events in the founding of the United States, the Federal Convention of 1787. He was in England, serving as ambassador from the United States. Nonetheless, Adams still influenced the proceedings at Philadelphia. Although he was physically absent, his ideas were a big part of the deliberations and decisions that produced a new frame of government for the United States, the Constitution of 1787.

The delegates in the Federal Convention respected the political experience and ideas of John Adams. Most of them had read his 1776 pamphlet, *Thoughts on Government*, which presented ideas for a model constitutional government. They knew that Adams' pamphlet had influenced the constitutions of at least six of the thirteen United States: New Jersey, Virginia, North Carolina, Maryland, Delaware, and New York. They also knew that Adams had drafted the 1780 Constitution of Massachusetts. Many Americans of Adams' time and later on have rated the Massachusetts frame of government as the best constitution produced by the original thirteen states during the 1770s and 1780s. It is the only one to have lasted from that era until the present. Seven years older than the Constitution of the United States, it is the world's oldest written constitution in use today.

John Adams believed that the powers of government should be separated and shared among three branches: the legislative or law-making branch, the executive or law-enforcing branch, and the judicial or law-interpreting branch. He argued that this distribution of power, among separated branches of government, reduces the possibilities for tyranny because no single person or group is likely to have too much power.

Adams strongly believed that a government must have sufficient power to act effectively for the common good, to provide order and protect the lives, properties, communities, and liberties of the people living under its authority. He also believed that power in government must be kept within proper limits to prevent abuses of it. Thus, according to Adams, the main purpose of a constitution is to provide sufficient power for effective government and appropriate limits on that power to protect the liberties and rights of individuals.

John Adams expressed these ideas in a letter to Richard Henry Lee of Virginia (November 15, 1775): "A Legislative, an Executive, and a judicial Power comprehend the whole of what is meant and understood by Government. It is by balancing each of these Powers against the other two, that the Effort in human Nature towards Tyranny can alone be checked and restrained and any degree of Freedom preserved in the Constitution." Adams elaborated upon these ideas in *Thoughts on Government*.

John Adams' Ideas in His Pamphlet, *Thoughts on Government*

Examine John Adams' ideas on separation of powers and limited government in the following excerpts from his pamphlet, *Thoughts on Government*. Answer the questions that follow the document.

Thoughts on Government
by John Adams
January 1776

. . . [A]s the divine science of politics is the science of social happiness, and the blessings of society depend entirely on the constitutions of government, which are generally institutions that last for many generations, there can be no employment more agreeable to a benevolent mind than a research after the best [type of government]. . . .

We ought to consider what is the end of government, before we determine which is the best form. Upon this point all speculative politicians will agree that the happiness of society is the end of government. . . . [T]he happiness of the individual is the end of man. From this principle it will follow that the form of government which communicates ease, comfort, security, or, in one word, happiness, to the greatest number of persons, and in the greatest degree, is the best. . . .

[Any honest and intelligent person agrees] that there is no good government but what is republican [government by elected representatives of the people]. . . . [T]he very definition of a republic is "an empire of laws, and not of men." That, as a republic is the best of governments, so that particular arrangement of the powers of society . . . that form of government which is best contrived to secure an impartial and exact execution of the laws, is the best of republics. . . .

As a good government is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country [such as the United States], it is impossible that the whole [people] should assemble to make laws. The first necessary step, then, is to depute [assign] power from the many to a few of the most wise and good. . . .

The principal difficulty lies, and the greatest care should be employed, in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them. That it may be the interest of this assembly to do strict justice at all times, it should be an equal representation, or, in other words, equal interests among the people should have equal interests in it. Great care should be taken to effect this, and to prevent unfair, partial, and corrupt elections. . . .

A representation of the people in one assembly being obtained, a question arises whether all the powers of government, legislative, executive, and judicial, shall be left in this body? I think a people cannot be long free, nor ever happy, whose government is in one assembly. My reasons for this opinion are as follow:

1. A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd

judgments. And all these errors ought to be corrected and defects supplied by some controlling power [a constitution constructed to limit the power of the people's representatives].

2. A single assembly is apt to be avaricious, and in time will not scruple to exempt itself from burdens, which it will lay, without compunction, on its constituents [unless its powers are limited appropriately by the higher law of a constitution].

3. A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. . . .

4. A representative assembly, although extremely well qualified, and absolutely necessary . . . is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch.

5. A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws.

6. Because a single assembly, possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.

But shall the whole power of legislation rest in one assembly? Most of the foregoing reasons apply equally to prove that the legislative power ought to be more complex. . . . [The legislature should be divided into two branches, and each branch should have power to check the other to prevent abuses of power. The executive power should also be separated from the legislative and granted power to check the legislature with a veto. The power of the executive should in turn be checked by the legislative branch and both should be checked by the voters who should have regular opportunities to elect new representatives in government, if deemed necessary]. . . .

The dignity and stability of government in all its branches, the morals of the people, and every blessing of society depends so much upon an upright and skillful administration of justice that the judicial power ought to be distinct from both the legislative and executive, and independent . . . so it may be a check upon both, as both should be checks upon that [the judicial branch]. The judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interest; they should not be dependent upon any man, or body of men. To these ends, they should hold estates for life in their offices; or, in other words, their commissions should be during good behavior, and their salaries ascertained and established by law. For misbehavior . . . the house of representatives should impeach them . . . [and] if convicted [they] should be removed from their offices. . . .

A constitution founded on these principles introduces knowledge among the people, and inspires them with a conscious dignity becoming freemen. . . .

Reviewing Ideas in Adams' Pamphlet, *Thoughts on Government*

1. Which of the following statements agree with ideas in *Thoughts on Government* by John Adams. Place a checkmark in the space next to each statement that agrees with Adams. Support and explain your choices by referring to specific parts of the document written by John Adams.

   a. The worth of a constitutional government depends entirely upon the people who live under its authority, and has little or nothing to do with the type of government it is.

   b. If the total power of a government is vested in one legislative assembly, composed of representatives elected by the people of a society, then the government is likely to achieve a great degree of liberty, order, and happiness for the greatest number of the people.

   c. Good government in a republic involves unlimited majority rule by elected representatives of the people.

   d. The best government for the United States would be one in which every citizen participates equally in the making of laws.

   e. Officials in the judicial branch of government should be separate and independent from a legislative assembly that is elected by the people.

   f. In a republican government, the temporary wishes of the people always should prevail over the legal principles in the constitution, because the end of government should be the happiness of the people.

   g. People in government inevitably will abuse their power unless they are restrained by a well-constructed constitution.

2. James Madison wrote (*The Federalist* No. 47): "No political truth is certainly of greater intrinsic value. . . . The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . . [T]he preservation of liberty requires that the three great departments of power should be separate and distinct." To what extent does John Adams, in *Thoughts on Government*, agree with this statement by James Madison? Support your answer with information in the document written by Adams. To what extent do you agree with Madison's statement? Why?

3. Why does Adams say that "a republic is the best of governments"? Do you agree with him? Explain.

John Adams and the Constitution of Massachusetts

In September 1779 John Adams had an opportunity to apply his ideas on constitutional government, as discussed in his *Thoughts on Government*. He was a delegate in the Constitutional Convention of Massachusetts, which had the task of creating a new frame of government for the state. Earlier in 1779 the people of the state had voted to have this Convention and had elected delegates to it. The first session of the Convention convened on September 1 at the Meeting House in Cambridge. The delegates selected a "Grand Committee" of 30 members to prepare a draft of a constitution. The Committee met and delegated its duties to a sub-committee of three men: Samuel Adams, James Bowdoin, and John Adams. John Adams took responsibility for writing the first draft of the Massachusetts Constitution.

The Convention held a second and third session to deliberate and decide about the provisions of John Adams' draft of a state constitution. The delegates modified Adams'

work, but his main ideas, and most of his words, were approved. On March 2, 1780, the Convention submitted the final draft of the Constitution to every town in the state. The town officials were instructed to hold special town meetings, so that the people could publicly examine and discuss every part of the proposed Constitution. Finally, the people of each town were asked to vote on the Constitution and to decide whether to ratify or reject it.

On June 15, 1780, the Convention held its final meeting to tally the ballots for and against the 1780 Constitution. They determined that more than two-thirds of the people had voted for the proposed frame of government and declared it the supreme law of the state. Massachusetts became the first state, anywhere in the world, to submit a constitution to its people for ratification.

This was a prime example of popular sovereignty and self-government. The government was framed by a Convention that derived its authority directly from the people. The people ratified the Constitution written by delegates that they had chosen to serve in a Convention that they had approved. The basic and supreme law of the state was made by the people who would be governed by it.

What kind of Constitution did the people of Massachusetts approve? Examine the following excerpts from and comments on the document to determine the main principles of government in it.

THE PREAMBLE set the main purposes of government. It said that the government was formed by the people to help them guard their civil rights and liberties: "[T]o furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness. . . ."

PART THE FIRST consists of 30 Articles, which comprise the *Declaration of Rights of the Inhabitants of the Commonwealth of Massachusetts*. Here are edited excerpts from 9 of the 30 Articles in the "Declaration of Rights" of Massachusetts.

Massachusetts
Declaration of Rights
1780

ARTICLE I. All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

. . . . . .

ARTICLE V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

. . . . . .

ARTICLE VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable . . . right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

. . . . . .

ARTICLE IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

ARTICLE X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary. . . .

. . . . . .

ARTICLE XVI. The liberty of the press is essential to the security of freedom in a state. It ought not, therefore, to be restrained in this commonwealth.

. . . . . .

ARTICLE XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

. . . . . .

ARTICLE XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

ARTICLE XXX. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

PART THE SECOND of the Massachusetts Constitution consists of the frame of government, the organization, structure, and rules for putting into practice the purposes of government and guarantees of individual rights and liberties stated in the Preamble and Declaration of Rights.

The powers of government are effectively divided among three parts or branches: (1) a legislature to make laws, (2) an executive department, headed by a governor, to carry out and enforce laws, and (3) an independent judicial department of law courts and judges to apply the law and to interpret the meaning of the law in cases brought into the state courts.

There are protections against the acquisition of too much power by any one part or branch of government at the expense of the other parts or of the people. Consider these examples:

- The legislature is bicameral—consisting of a lower house, the General Court, and an upper house, the Senate. A majority in both houses has to approve bills for them to become laws. Thus,

each house can check the power of the other one.

- The governor can check the legislature with the power to veto legislation passed by both houses. However, a two-thirds vote in both houses of the legislature is sufficient to overturn a governor's veto.
- Appointed by the governor, judges can stay in office for life, as long as they behave properly. Thus, they can make decisions without pressure from the executive and legislative branches of government.
- The eligible voters of the state have the ultimate check upon the governor and the legislators, because a majority of them can vote officials out of office at regularly scheduled elections.

Unlike today, a person in Massachusetts had to own property worth a certain amount of money and to be a taxpayer to qualify as a voter. Furthermore, in those days only male adults could vote and hold public office. Free black males were eligible to vote and hold public office. Slavery was abolished in Massachusetts in 1783 by a judicial decision.

Reviewing Ideas in the Massachusetts Constitution

1. Which ARTICLES in PART THE FIRST of the Massachusetts Constitution, the "Declaration of Rights," include examples of John Adams' concept of separation of powers in government? Identify the numbers of the ARTICLES and explain why they exemplify separation of powers.

2. How is Adams' concept of separation of powers included in PART THE SECOND of the Massachusetts Constitution, the frame of government?

3. Does the Massachusetts Constitution exemplify John Adams' concept of republican government? Explain. Refer to specific parts of the Constitution that exemplify republican government, as Adams defined it in his *Thoughts on Government*.

The Influence of John Adams on the 1787 Constitution

After writing the Massachusetts Constitution, John Adams devoted his energies to foreign affairs and served his country abroad, most notably as the ambassador from the United States to the government of Great Britain. He continued to think about constitutional government, however, and wrote three volumes about constitution-making in the American states: *Defence of the Constitutions of the United States*. Adams' purpose was to demonstrate the worth of the thirteen state constitutions, especially his Massachusetts Constitution. He wanted to provide these American achievements in government as models that other countries might follow.

Volume I of the "Defence"—the first of three volumes in Adams' study of American state constitutions—was ready in time for the 1787 Federal Convention. Copies of Adams' new book reached America from England as the delegates were gathering in Philadelphia, and most of them read and discussed it approvingly. However, Adams' new book was mostly a detailed review and celebration of old ideas in the American political experience. So the book merely reminded delegates to the Federal Convention about ideas they already knew and accepted, such as separation of powers as a means to limited government and the rule of law in a republic.

The participants in the Federal Convention had long before been schooled in the ideas of Adams' 1776 pamphlet, *Thoughts on Government*, and most of them admired the exemplary Constitution of Massachusetts. It was through these two documents that John Adams, although abroad in England, affected the deliberations and decisions at the Federal Convention.

The document produced at Philadelphia in 1787 was clearly related to the Massachusetts Constitution. It provided for a government with sufficient power to act effectively and with sufficient limits on its power to protect the liberties of the people. And separation of powers among three branches of government was a prominent feature of the 1787 Constitution. Thus, as he physically served his country in England, John Adams also spiritually and symbolically contributed to the pivotal event in Philadelphia during the summer of 1787.

Reviewing Facts and Main Ideas

1. What was the connection of John Adams with each item in the list below?
   a. First and Second Continental Congress
   b. The 1776 pamphlet, *Thoughts on Government*
   c. The Massachusetts Constitutional Convention, 1779–80
   d. Treaty of Paris, 1783
   e. The three-volume set, *Defence of the Constitutions of the United States*, 1787–88

2. What was the meaning in the constitutional thought of John Adams of each term in the following list?
   a. republican government
   b. separation of powers
   c. popular sovereignty
   d. an empire of laws

3. Why was John Adams absent from the Federal Convention of 1787?

4. How did John Adams influence the Federal Convention even though he was not there?

Interpreting and Judging Ideas in Documents

1. Do the two statements below agree with the ideas of John Adams as expressed in two documents: *Thoughts on Government* and the Massachusetts Constitution? Do you agree with the two statements? Explain.
   a. The end of government is the greatest happiness in the greatest degree for the greatest number of persons.
   b. The first and absolute obligation of every citizen is to obey the laws of his government without question, so that there will be a government of laws and not of men.

2. Refer to Articles I, II, and III of the Constitution of the United States. To what extent does the structure of government in Articles I, II, and III fit John Adams' concept of separation of powers in his *Thoughts on Government* and Massachusetts Constitution?

3. John Adams wrote in *Defence of the Constitutions of the United States*: "If it is meant by the people ... a representative assembly ...

they are not the best keepers of the people's liberties or their own, if you give them all the power, legislative, executive, and judicial. They would invade the liberties of the people, at least the majority of them would invade the liberties of the minority, sooner and oftener than any absolute monarch." Does this statement agree with John Adams' 1776 pamphlet, *Thoughts on Government* and the Massachusetts Constitution? Explain. To what extent do you agree or disagree with this statement?

PART III

Introduction

The Virginia Plan of 1787: James Madison's Outline of a Model Constitution

Teaching Plan for Lesson 3

Lesson Three: James Madison and the Virginia Plan

III
Introduction

James Madison has been called the "Father of the Constitution," and with good reason. Although several individuals contributed substantially to the product of the Federal Convention of 1787, no one could deny Madison's primary contribution: he shaped and defended the Virginia Plan, which set the agenda and framework for the work of the Federal Convention. Furthermore, his trenchant criticisms of the Articles of Confederation and astute political maneuverings greatly influenced events that led directly to the Federal Convention of 1787.

Madison played a key role in organizing and directing the Annapolis Convention, September 11–14, 1786, which called upon the thirteen states to send delegates to Philadelphia to revise the Articles of Confederation. Then, as a member of the Congress under the Articles of Confederation, Madison worked to influence his colleagues to issue an official call for a Federal Convention.

After the Congress of the United States heeded Madison's advice and issued a resolution sanctioning a Federal Convention (February 21, 1787), he influenced important leaders such as George Washington to participate in it, which contributed greatly to the legitimacy and authority of the Convention.

After his selection as a delegate from Virginia to the Federal Convention, Madison prepared diligently for his fateful role. He spent several weeks in his library at Montpelier reading the classic works of political theory and drafting plans to improve government in the United States. Then, he arrived in Philadelphia almost two weeks before the start of the Federal Convention and met daily with other members of the Virginia delegation, who agreed to cooperate with him to influence the direction of the upcoming Convention. During these meetings, Madison and the other Virginians created the Virginia Plan—an outline for an entirely new government of the United States.

Madison was a powerful force in the Federal Convention where he attended every meeting, kept the most complete written record of the proceedings, and spoke convincingly for the Virginia Plan. Madison did not win all of his points. Some parts of the Virginia Plan were struck down and others modified, not always in ways that pleased him. Nevertheless, Madison's influence on the events in Philadelphia was sufficiently great to warrant this statement by his noted biographer, Robert A. Rutland: "Every great movement requires a leader, it seems, and in 1787 Madison shouldered much of the burden for implementing the work of the Philadelphia convention" (*James Madison, The Founding Father*, 1987, 23).

Professor Rutland's greatest praise for Madison comes at the end of his book, as he assesses the large accomplishments of this great man. Rutland concludes: "By the criteria of his own time, James Madison was our last great republican. By the criteria of our own, Madison was *the* Founding Father" (p. 253).

Part III includes an essay by Robert A. Rutland: "The Virginia Plan of 1787: James Madison's Outline of a Model Constitution." Rutland documents the influence of Madison upon the Virginia Plan and discusses the importance of this document in the Federal Convention of 1787.

Rutland's essay is followed by a Teaching Plan and a Lesson for high school students: "James Madison and the Virginia Plan." These materials enable high school teachers and students to examine the Virginia Plan closely and to compare it with the New Jersey Plan and the Constitution of 1787. Thus, they might learn about the influence of Madison and the Virginia Plan on the Constitution of 1787.

DOCUMENTS

The Virginia Plan of 1787: James Madison's Outline of a Model Constitution

by ROBERT A . RUTLAND

In 1834, almost fifty years after he walked forward to sign the Constitution at Philadelphia in September of 1787, James Madison had to be flattered when an admiring citizen spoke of him as "*the* writer of the Constitution of the U. S." But Madison quickly set the record straight. "You give me a credit to which I have no claim," the eighty-three-year-old Virginian explained, for the Constitution "was not, like the fabled Goddess of Wisdom, the offspring of a single brain. It ought to be regarded as the work of many heads & many hands."

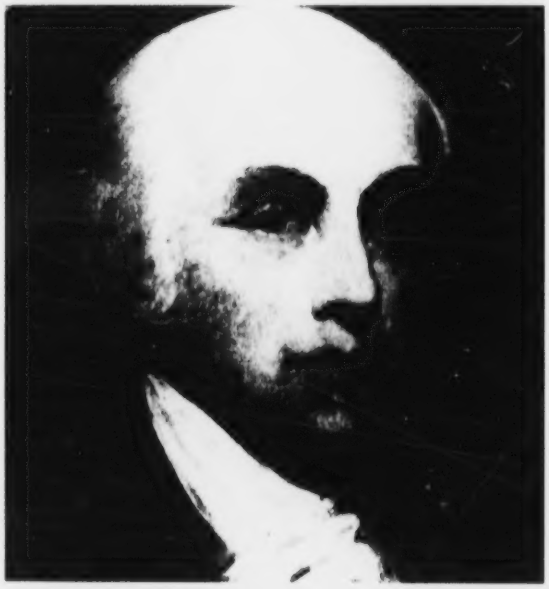
Madison's self-effacement has not misled scholars. What has eluded historians is Madison's total involvement in the convention process, and most particularly his key role in drafting the all-important Virginia Plan. From start to finish, Madison was busy digging a grave for the Articles of Confederation and giving birth to a new constitution that would redeem the promise of the American Revolution.

As the last survivor of the Federal Convention of 1787, Madison knew he had an obligation to keep the creation of the Constitution in perspective. Moreover, he was acutely aware of what it meant to have the nation's esteem as the remaining patriot of the fifty-five who had assembled in Philadelphia in a mood of anxiety if not desperation. "Having outlived so many of my co[n]temporaries," he told Jared Sparks in 1831, "I ought not to forget that I may be thought to have outlived myself." The "Father of the Constitution" simply thought of himself as one of the committee members who struggled during the summer of 1787 to save the Republic. Or so he said. Despite his modesty Madison knew that he, along with James Wilson, George Mason, and Gouverneur Morris had done most of the talking and the drafting of the document that emerged in mid-September.

At the Constitutional Convention, Madison had been well prepared to address the subject of national government. During the years 1780 to 1783, when he served in the Continental Congress, he perceived the Republic was in trouble as state interests checked even the slightest expansion of national power for the common good. The Articles of Confederation provided for unanimous action on such vital matters as the creation of a duty on imports and repayment of the war debt. Unanimity on such matters proved to be impossible. Although no longer on the Virginia delegation in Congress in 1784, Madison was acutely aware of the sectional strains that occurred when foreign secretary John Jay negotiated with Spain in 1784-85 for a commercial outlet on the Mississippi, and he saw New Englanders ready to swap American rights for river traffic in exchange for a European market for their codfish. Madison also looked at the empty Continental treasury and contrasted its barren coffers with the comfortable New York cash balance built at the expense of imports going to neighboring states. Meanwhile, not a cent was contributed to hold down the mounting national war debt, and even Virginia rescinded an earlier vote for a national impost.

Troubled by the inconsistent behavior of his fellow delegates and anxious to keep the national government from collapsing, Madison during 1786 and early 1787 delved into histories of ancient republics and confederacies as a doctor would seek pathological knowledge. The disease was easy to diagnose—an empty treasury, a cash-poor economy, and a leaderless national government that was powerless to remedy problems of the purse or sword. To Madison's scholarly mind the remedy lay in a study of the problems which confronted the ancient Greek confederacies. What kept the Achaeans together, and how had the Swiss confederation solved its problems of inter-cantonal jealousy?

In April 1787, some months after preparing his intellectual exercise in ancient and recent history, Madison took up his pen again to dissect ills closer to home. With the Philadelphia meeting only



James Madison. *Library of Congress.*

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George Wythe. *Library of Congress.*

weeks away, Madison's memorandum on "Vices of the Political system of the U. States" was mainly an indictment of the state legislatures. These assemblies all but ignored Continental requisitions; they had no sense of national interest when parochial concerns hung in the balance; and they overlegislated to the point that they created a "multiplicity of laws . . . a nu[i]sance of the most pestilent kind." In this private paper, Madison added a section on "the people themselves," with an analysis of self-interested segments in society that was a precursor of his *Federalist* No. 10 essay.

> *All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors — Rich or poor — husbandmen, merchants or manufacturers — members of different religious sects — followers of different political leaders — inhabitants of different districts — owners of different kinds of property &c &c. In republican Government the majority[,] however composed, ultimately give the law.*
>
> **Vices of the Political System of the U. States**

Madison saw that combinations of these elements became a headstrong majority capable of "unjust violations of the rights and interests of the minority, or of individuals." Madison perceived that a republic had to bend to the will of the majority, but where there were no checks on rapacious factions chaos would result. Thus the challenge to republican government: "to controul one part of Society from invading the rights of another, and at the same time [be] sufficiently controulled itself."

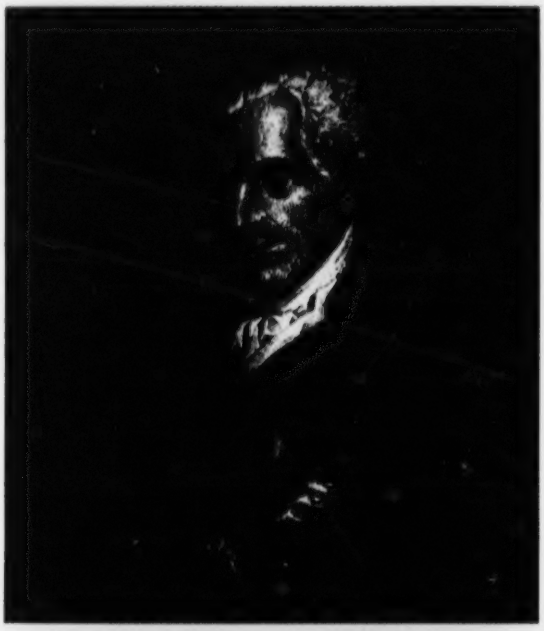
What Madison accomplished in the Virginia legislature between early 1785 and the end of 1786 was remarkable. He kept the forces of local intolerance at bay, worked for a cooperative effort with Maryland to redress interstate problems on the Potomac, and then fashioned a call for a national meeting in Annapolis to discuss remedies for the faltering confederation.

At first not much developed; even Maryland would not bother to send delegates to his Annapolis convention. But Madison talked there with a few delegates and particularly with Alexander Hamilton, who agreed that matters were moving from bad to worse. The vague plan which emerged from Annapolis took Madison back to Richmond, where a national call was sent out by the authority of the Virginia General Assembly, asking each state to send delegates to Philadelphia on May 14, 1787, for a general meeting. The purpose of the emergency meeting at Philadelphia was clear, as one of the delegates later said: "A nation without a national government" was "an awful spectacle."

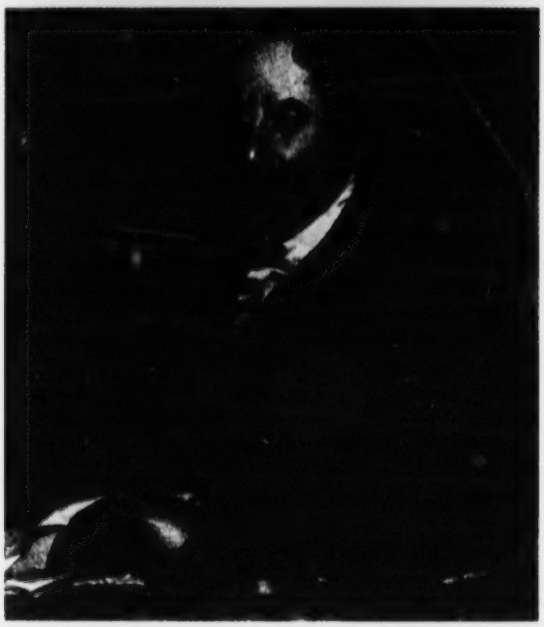
As Madison saw matters, so far so good. He begged and cajoled Washington into agreeing to come to Philadelphia. He tried to get the best men in Virginia to join the general, and with the likes of George Mason, George Wythe, and Governor Edmund Randolph he felt comfortable. Good news came from other states, too. The New England states were sending such men of substance as Rufus King, Oliver Ellsworth, and Elbridge Gerry. Somehow, Hamilton had been picked from New York, along with Gouverneur Morris and James Wilson from Pennsylvania. The southern contingent, led by the Virginians, included two Pinckneys, Hugh Williamson, and Pierce Butler from the Carolinas.

From his experience in the Virginia House of Delegates, Madison knew that the introduction of a general framework would be critical at the early convention sessions. "We all look to Virginia for examples," John Adams had said at an earlier time, half in flattery, half in truth. During the eleven days preceding the opening of the Convention in May, Madison coddled and prodded his fellow Virginia delegates into holding daily sessions to discuss what kind of blueprint they needed to get the convention moving, once a quorum was present. The result was the Virginia Plan. The plan was a masterly device urged by Madison to prevent debate on a revision of the Articles of Confederation and move directly to the heart of the matter: the creation of a new, stronger, and essentially consolidated republic. Weeks and perhaps months were saved by this clever move.

As governor and hence titular head of the state



Elbridge Gerry. *Library of Congress.*



Rufus King. *Library of Congress.*

delegation, Edmund Randolph presented the plan on the floor of the Convention; the proposed outline of the government thus became known as the Randolph Plan, as well as the Virginia Plan. Neither of these familiar names reveals its true creator. Although Madison never claimed that this plan was his exclusive brainchild, a comparison of its text with his letters to Jefferson on March 19, to Randolph on April 8, and to Washington on April 16 leave little doubt as to the main authorship of the Virginia Plan. All the ideas for a new constitution were embodied in these three letters, although one (an absolute veto over state laws by the federal government) had to be toned down considerably.

James Madison to Thomas Jefferson
March 19, 1787 — New York, New York
(James Madison Papers, Library of Congress)

. . . What may be the result of this political experiment cannot be foreseen. The difficulties which present themselves are on one side almost sufficient to dismay the most sanguine, whilst on the other side the most timid are compelled to encounter them by the mortal diseases of the existing constitution. These diseases need not be pointed out to you who so well understand them. Suffice it to say that they are at present marked by symptoms which are truly alarming, which have tainted the faith of the most orthodox republicans, and which challenge from the votaries of liberty every concession in favor of stable Government not infringing fundamental principles, as the only security against an opposite extreme of our present situation. I think myself that it will be expedient in the first place to lay the foundation of the new system in such a ratification by the people themselves of the several States as will render it clearly paramount to their Legislative authorities. 2dly. Over & above the positive power of regulating trade and sundry other matters in which uniformity is proper, to arm the federal head with a negative in all cases whatsoever *on the local Legislatures. Without this defensive power experience and reflection have satisfied me that however ample the federal powers may be made, or however Clearly their boundaries may be delineated, on paper, they will be easily and continually baffled by the Legislative sovereignties of the States. The effects of this provision would be not only to guard the national rights and interests against invasion, but also to restrain the States from thwarting and molesting each other, and even from oppressing the minority within themselves by paper money and other unrighteous measures which favor the interest of the majority. In order to render the exercise of such a negative prerogative convenient, an emanation of it must be vested in some set of men within the several States so far as to enable them to give a tempo-*

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rary sanction to laws of immediate necessity. 3dly. to change the principle of Representation in the federal system. Whilst the execution of the Acts of Congs. depends on the several legislatures, the equality of votes does not destroy the inequality of importance and influence in the States. But in case of such an augmentation of the federal power as will render it efficient without the intervention of the Legislatures, a vote in the general Councils from Delaware would be of equal value with one from Massts. or Virginia. This change therefore is just. I think also it will be practicable. A majority of the States conceive that they will be gainers by it. It is recommended to the Eastern States by the actual superiority of their populousness, and to the Southern by their expected superiority. And if a majority of the larger States concur, the fewer and smaller States must finally bend to them. This point being gained, many of the objections now urged in the leading States agst. renunciations of power will vanish. 4thly. to organise the federal powers in such a manner as not to blend together those which ought to be exercised by separate departments. The limited powers now vested in Congs. are frequently mismanaged from the want of such a distribution of them: What would be the case, under an enlargement not only of the powers, but the number, of the federal Representatives? These are some of the leading ideas which have occurred to me, but which may appear to others as improper, as they appear to me necessary. . . .

James Madison to Edmund Randolph
April 8, 1787 — New York, New York
(James Madison Papers, Library of Congress)

. . . I think with you that it will be well to retain as much as possible of the old Confederation, tho' I doubt whether it may not be best to work the valuable articles into the new System, instead of engrafting the latter on the former. I am also perfectly of your opinion that in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States as that a partial adoption will be binding. Particular States may view the different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratification of both would go for nothing. I have not however examined this point thoroughly. In truth my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point that an individual independence of the States, is utterly irreconcileable with the idea of an aggregate sovereignty. I think at the same time that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is I think a change in the principle of representation. According to the present form of the Union, an equality of suffrage if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontroulable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massts. or Virga.

Let the national Government be armed with a positive & compleat authority in all cases where uniform measures are necessary. As in trade &c. &c. Let it also retain the powers which it now possesses.

Let it have a negative in all cases whatsoever on the Legislative Acts of the States as the K. of G. B. heretofore had. This I

conceive to be essential and the least possible abridgement of the State Soveriegnties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the federal assent wd have been given to paper money &c. &c.

Let this national supremacy be extended also to the Judiciary departmt. If the judges in the last resort depend on the States & are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the Tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the national Government.

The supremacy of the whole in the Executive department seems liable to some difficulty. Perhaps an extension of it to the case of the Militia may be necessary & sufficient.

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches: One of them to be chosen every years by the Legislatures or the people at large; the other to consist of a more select number, holding their appointments for a longer term and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers.

A National Executive will also be necessary. I have scarcly venturd to form my own opinion yet either of the manner in which it ought to be constituted or of the authorities with which it ought [to be] cloathed.

An article ought to be inserted expressly guarantying the tranquility of the States agst. internal as well as external dangers.

To give the new system its proper energy it will be desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it my self to go no further than is essential. The objections drawn from this source are to be laid aside. I flatter myself however that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The Northern States will be reconciled to it by the actual *superiority of their populousness: the Southern by their* expected *superiority in this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant Will. It is also already seen by many & must by degrees be seen by all that unless the Union be organized efficiently & on Republican Principles, innovations of a much more objectionable form may be obtruded, or in the most favorable event, the partition of the Empire into rival & hostile confederacies, will ensue.*

To Washington, he repeated the thoughts in the first two letters but enlarged his ideas on a national judiciary.

James Madison to George Washington
April 16, 1787 — New York, New York
(George Washington Papers, Library of Congress)

. . . The National supremacy ought also to be extended as I conceive to the Judiciary departments. If those who are to expound and apply the laws, are connected by their interests and their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the Judges should include a fidelity to the general as well as local Constitution, and that an appeal should be to some National tribunals in all cases to which foreigners or inhabitants of other States may be parties. The

admiralty jurisdiction seems to fall entirely within the purview of the National government.

The National supremacy in the Executive departments is liable to some difficulty, unless the Officers administering them could be made appointable by the Supreme government. The Militia ought certainly to be placed in some form or other under the authority which is entrusted with the general protection and defence.

A government composed of such extensive powers should be well organised and balanced. The legislastive department might be divided into two branches; one of them chosen every years by the people at large, or by the Legislatures; the other to consist of fewer members, to hold their places for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. Perhaps the negative on the laws might be most conveniently exercised by this branch. As a further check, a Council of revision including the great ministerial officers might be superadded.

A national Executive must also be provided, I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be cloathed.

An article should be inserted expressly guarantying the tranquillity of the States against internal as well as external dangers.

In like manner the right of coercion should be expressly declared. With the resources of commerce in hand, the national administration might always find means of exerting it either by sea or land; But the difficulty and awkwardness of operating by force on the collective will of a State, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependance between the general and particular authorities, as to answer this purpose. Or perhaps some defined objects of taxation might be submitted along with commerce, to the general authority.

To give a new system its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures. This will be the more essential as inroads on the existing Constitutions *of the States will be unavoidable. . . .*

So it fell to Randolph to bring forward, on May 29, 1787, the first day of real business, Madison's framework for a totally new constitution — a framework that suggested the Articles of Confederation needed revision and then in the next breath proposed to abandon them forever. The core of the problem facing delegates was a realignment of the state-nation relationship. States would no longer vote one vote as states (the largest and smallest being equal) but would share power in the two-house legislature according to their population. The legislators would pick "a National Executive" who would serve one term as the chief magistrate of the nation and who would have the power to make appointments, see that the national laws were enforced, conduct the nation's business when its legislature was not in session, and (in a vague way) conduct foreign policy. The acts of state legislatures might be nullified by the national congress, and a council of revision would work with the executive to review national acts before they went into operation; and if the executive and his council thought an act from the national congress improper, they could block its implementation. However, the questioned act would become law if the legislature became insistent by passing it a second time.

Undoubtedly Madison urged these ideas before the Virginia caucus because they appeared to remedy the chief flaws in earlier attempts at representative government. Madison was no Demosthenes or Patrick Henry, but in small groups he was convincing and persuasive; and the Virginia Plan which he pushed through that state caucus bore his hallmark on almost every clause. (Randolph himself could hardly have been the author. Thomas Jefferson expressed a common view of the man when he said of Randolph later: "He is the poorest cameleon I ever saw having no colour of his own, & reflecting that [of the person] nearest him.") The Virginia Plan became a document within a document — both a knockout blow to the old Articles and the framework of all future discussion.

The Virginia Plan

Resolutions proposed by Mr. Randolph in Convention
May 29, 1787

1. Resolved that the Articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty and general welfare."

2. Resd. therefore that the rights of suffrage in the National Legislature ought to be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. Resd. that the National Legislature ought to consist of two branches.

4. Resd. that the members of the first branch of the national Legislature ought to be elected by the people of the several States every for the term of ; to be of the age of years at least, to receive liberal stipends by which they may be compensated for the devotion of their time to public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those beculiarly [sic] belonging to the functions of the first branch, during the term of service, and for the space of after its expiration; to be incapable of re-election for the space of after the expiration of their term of service, and to be subject to recall.

5. Resold. that the members of the second branch of the National Legislature ought to be elected by those of the first; out of a proper number of persons nominated by the individual Legislatures, to be of the age of years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of after the expiration thereof.

6. Resolved that each branch ought to possess the right of originating Acts; that the national Legislature ought to be impowered to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union agst. any member of the Union failing to fulfill its duty under the articles thereof.

7. Resd. that a National Executive be instituted; to be chosen by the National Legislature for the term of years, to receive punctually at stated times a fixed compensation for the services rendered, in which no increase or diminution shall be made so as to affect the Magistracy, existing at the time of increase or diminution, and to be ineligible a second time; and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights vested in Congress by the Confederation.

8. Resd. that the Executive and a Convenient number of the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate, & every act of a particular Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by of the members of each branch.

9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all Piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

10. Resolvd. that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of Government & Territory or otherwise, with the consent of a number of voices in the National legislature less than the whole.

11. Resd. that a Republican Government & the territory of each State, except in the instance of a voluntary junction of Government & territory, ought to be guaranteed by the United States to each State.

12. Resd. that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the articles of Union shall be adopted, and for the completion of all their engagements.

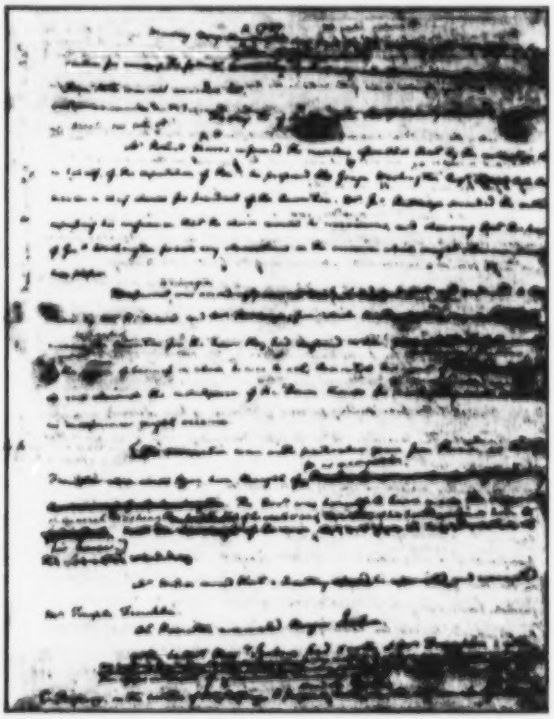
13. Resd. that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. Resd. that the Legislative Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union.

15. Resd. that the amendments which shall be offered to the Confederation, by the Convention ought at a proper time, or times, after the approbation of Congress to be submitted to an assembly or assemblies of Representatives, recommended by the several Legislatures to be expressly chosen by the people to consider & decide thereon.

Few scholars have pointed out that this document, now an integral part of Madison's "Notes on Debates," his personal record of the convention proceedings, was a genuine landmark in the history of American constitutionalism. The genius of Madison was evident. He had lobbied for a revision of the Articles, worked for a convention to turn the country around through a new system of government, and then laid before that convention a plan that was radical in concept and yet so close to what most of the delegates had been thinking that they immediately went into a Committee of the Whole on the State of the Union to consider the Virginian's plan.

If the original draft was finally handed to the Convention's Secretary, William Jackson, it must have been among the papers that this inept man burned before he prepared the journal and other papers for Washington's safekeeping. But we can be sure that the version Madison copied into his own "Notes on Debates" is as faithful a copy of the original as we will ever see; and it was a framework for what, after four tempestuous months and many changes, survived as the Constitution sent by the convention to the states. Had Madison's services to the convention ended on May 29 he would still deserve to be thought of as the Father of the Constitution. As we all know, he considered his work only begun.



The first page of Madison's "Notes on Debates," with typical crossed-through clauses and later additions made as Madison sought greater accuracy in his text. *Library of Congress.*

Robert A. Rutland is editor-in-chief of the Papers of James Madison at the University of Virginia. His books include *The Birth of the Bill of Rights* and *The Ordeal of the Constitution: the Antifederalists and the Ratification Struggle of 1787-1788* (both reprinted by Northeastern University Press, 1983).

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III
Teaching Plan for Lesson 3
James Madison and the Virginia Plan

Objectives

Students are expected to
1) comprehend the origin of the Virginia Plan of 1787;
2) identify main ideas about constitutional government in the Virginia Plan of 1787;
3) compare ideas about constitutional government in the Virginia Plan and in Madison's letter to Washington (April 16, 1787);
4) identify examples of the influence of the Virginia Plan on the Constitution of 1787;
5) interpret, analyze, and evaluate information and ideas in three documents: Madison's letter to Washington (April 16, 1787), the Virginia Plan, and the Constitution of 1787.

Preparing to Teach the Lesson

Read the essay by Robert A. Rutland, "The Virginia Plan of 1787: James Madison's Outline of a Model Constitution." Pay special attention to these parts of Rutland's essay: (a) the complete text of the Virginia Plan, (b) ideas about national government in Madison's letters to Jefferson, Randolph, Washington, (c) evidence about Madison's major contributions to the contents of the Virginia Plan, and (d) claims about the central importance of the Virginia Plan in the Federal Convention of 1787.

Read Lesson 3, "James Madison and the Virginia Plan." Pay special attention to the abridged and edited version of the Virginia Plan, which is the focal point of the lesson.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Write the name of James Madison on the chalkboard. Ask students to list his major accomplishments in American history. Make a list of student responses.

If anyone mentions the Virginia Plan or Madison's leadership role in the Federal Convention of 1787, then stop and question students about these points. If no one mentions the Virginia Plan after about five minutes, then the teacher should write this term on the chalkboard. Ask students to tell what they know about the Virginia Plan and Madison's association with it.

After a brief speculative discussion about Madison and the Virginia Plan, tell students that the main point of this Lesson is to examine the Virginia Plan, Madison's contributions to it, and its influence on the Constitution of 1787.

Developing the Lesson

Ask students to read the parts of the Lesson on the background of the Virginia Plan. Ask them to pay special attention to a document in this part of the lesson: Madison's letter to George Washington (April 16, 1787). Emphasize this document as a source of ideas for the Virginia Plan, which Madison and his colleagues advanced at the 1787 Federal Convention.

Assign the abridged and edited version of the Virginia Plan and the exercise that follows it. Tell students to prepare answers to items 1–18 of the exercise, which requires them to interpret and make judgments about main points in the Virginia Plan.

Conduct a full-class discussion of items 1–18. The discussion should be based on the contents of the text of the Virginia Plan. Insist that students back up their answers with evidence from the Virginia Plan.

Answers to the exercise are presented below.

1. NO, #3.
2. NO, #5.
3. YES, #1.
4. YES, #6.
5. YES, #6.
6. YES, #9.
7. NO, #13.
8. UNCERTAIN
9. YES, #14.
10. YES, #11.
11. NO, #7.
12. NO, #8.
13. YES, #8.
14. YES, #3.
15. YES, #8.
16. YES, #6, 14.
17. YES, #6–9.
18. NO, #6, 14.

Assign the remainder of the Lesson. Ask students to prepare answers to the three sets of questions at the end of the Lesson.

Concluding the Lesson

Conduct a concluding class discussion about the Virginia Plan and its influence on the 1787 Constitution. Make the point that the Virginia Plan was an attempt to replace a government (Articles of Confederation) that emphasized the rights and powers of states vis-a-vis the national government. Require students to explain and justify their answers with references to the contents of the Virginia Plan, the 1787 Constitution, and Madison's letter to Washington.

This discussion requires students to use specified parts of the text of the Constitution. Make students support answers with examples from the Constitution. Students should understand that the Virginia Plan had a large impact on several parts of the Constitution of 1787 and that the New Jersey Plan had an influence on Article VI.

End the Lesson with the final two questions, which require students to make judgments about ideas in documents. The first question requires students to use evidence in documents to support claims about authorship of the Virginia Plan. The second question is more speculative and open-ended. Students are asked to make judgments about two parts of the Virginia Plan that were rejected by the Federal Convention.

III
Lesson 3
James Madison and the Virginia Plan

The year 1787 was a turning point in the history of the United States. This was the year of the Federal Convention that made a new Constitution for the United States—a frame of government that has endured for more than 200 years and has inspired and influenced people around the world.

Among the notable delegates in the Federal Convention, none played a more important role than James Madison of Virginia. In 1787 Madison was 36 years old, one of the youngest delegates in the Federal Convention. His peers, however, viewed him as one of the most able persons among the unusually competent collection of individuals at the Convention.

Madison kept the most complete records of the Convention proceedings, and he advanced ideas that were centrally included in the 1787 Constitution. After the Convention, he played a major part in securing ratification of the new frame of government. In 1789, Madison was elected to the first session of Congress as a Representative from Virginia. He proposed amendments to the 1787 Constitution that became the Federal Bill of Rights. Madison later served as Secretary of State under President Thomas Jefferson and as fourth President of the United States.

James Madison's great career was based on his greatest achievement—his contributions to the creation of the 1787 Constitution. And among his significant contributions to the framing of the new government, none was more important than his part in constructing and advancing the Virginia Plan, the outline for constitutional government that set the tone and terms of the deliberations at the Federal Convention in Philadelphia.

Background of the Virginia Plan

On February 21, 1787, the Congress of the United States granted approval for a Federal Convention: "Resolved that ... on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation [in order to] render the federal constitution adequate to the exigencies of Government & the preservation of the Union."

Several weeks before the start of the Federal Convention, Madison began his campaign to influence the outcome to provide the kind of government he wanted the United States to have. He wrote letters to important leaders that set forth his ideas on constitutional government. Thus, Madison hoped to win support for these ideas among individuals who would be important delegates to the Federal Convention. In these letters, Madison presented the main features of the Virginia Plan, which the delegates from his home state (Virginia) would present to the Federal Convention as the agenda for deliberation and decision making.

One of the most interesting and influential of the Madison letters was written to George Washington in April 1787. Examine the abridged and edited version of this letter below and identify Madison's main ideas on constitutional government.

James Madison to George Washington
April 16, 1787

DEAR SIR,—I have been much honored with your letter of the 31 March, and find, with much pleasure, that your views of the reform which ought to be pursued by the Convention give a sanction to those which I have entertained. ...

Having been lately led to resolve the subject which is to undergo the discussions of the Convention, and formed some outline of a new system [of constitutional government], I take the liberty of submitting them ... to your eye. ...

Conceiving that an individual independence of the States is utterly irreconcilable with the aggregate sovereignty, and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for some middle ground, which may at once support active supremacy of the national authority, and not exclude the local authorities whenever they can be subordinately useful.

I would propose as the groundwork that a change be made in the principle of representation. [Representation and voting power of the states in the U.S. Congress should be based on population; the larger states should have more representatives and votes than the smaller states.]

I would propose next that ... the national Government should be armed with positive and complete authority in all cases which require uniformity; such as the regulation of trade, including the right of taxing both exports and imports, the fixing of terms and forms of naturalization [and so forth]. ...

... The National supremacy ought also to be extended as I conceive to the Judiciary departments. If those who are to expound and apply the laws, are connected by their interests and their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the Judges should include a fidelity to the general as well as local Constitution. ...

The National supremacy in the Executive departments is liable to some difficulty, unless the Officers administering them could be made appointable by the Supreme government. The Militia ought certainly to be placed in some form or other under the authority which is entrusted with the general protection and defence.

A government composed of such extensive powers should be well organised and balanced. The legislative department might be divided into two branches; one of them chosen every ___ years by the people at large, or by the [state] Legislatures; the other to consist of fewer members, to hold their places for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. ...

A national Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be

constituted or of the authorities with which it ought to be cloathed.

An article should be inserted expressly guarantying the tranquillity of the States against internal as well as external dangers.

In like manner the right of coercion should be expressly declared. With the resources of commerce in hand, the national administration might always find means of exerting it either by sea or land. . . .

To give a new system its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures. This will be the more essential as inroads on the existing Constitutions of the States will be unavoidable. . . .

During the eleven days before the opening of the Federal Convention, James Madison and other members of the Virginia delegation met daily to develop ideas for a new government of the United States—the Virginia Plan. Edmund Randolph, Governor of Virginia, agreed to present the plan to the Convention, but James Madison was the main contributor to its contents.

Contents of the Virginia Plan

The Virginia Plan set the Convention on a new course. It called for (1) a new Constitution, not revisions of the Articles of Confederation, and (2) it proposed a national government, not a pure confederation of the states. Study the abridged and edited version of the Virginia Plan, which is presented below. Note the similarity of the Virginia Plan to ideas on constitutional government in Madison's letter to Washington.

The Virginia Plan
Resolutions Proposed by Mr. Randolph in Convention
May 29, 1787

1. Resolved that the Articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely, "common defence, security of liberty and general welfare."

2. Resd. therefore that the rights of suffrage [voting rights] in the National Legislature [Congress] ought to be proportioned to . . . the number of free inhabitants. . . .

3. Resd. that the National Legislature ought to consist of two branches.

4. Resd. that the members of the first branch [House of Representatives] of the national Legislature ought to be elected by the people of the several States. . . .

5. Resold. that the members of the second branch [Senate] of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual [State] Legislatures . . . to hold their offices for a term sufficient to ensure their independency [freedom from popular pressures]. . . .

6. Resolved that each branch [of Congress] ought to possess the right of originating Acts [legislation]; that the national Legislature ought to [have] the Legislative Rights [powers] vested in Congress by the Confederation [Articles of Confederation] & moreover to legislate in all cases to which the separate States are incompetent . . . [and] to negative [veto] all laws passed by the several States, contravening [violating] in the opinion of the National Legislature the articles of Union [new Constitution]; and to call forth the [military] force of the Union agst. any member [State] of the Union failing to fulfill its duty under the articles thereof.

7. Resd. that a National Executive be instituted; to be chosen by the National Legislature . . . and that besides a general authority to execute the National laws, it ought to enjoy the Executive rights [powers] vested in Congress by the Confederation [Articles of Confederation].

8. Resd. that the Executive and . . . the National Judiciary, ought to compose a Council of revision with authority to examine every act of the National Legislature before it shall operate [be a law], and every act of a particular [state] Legislature before a Negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the Act of the National Legislature be again passed, or that of a particular Legislature be again negatived by [a proportion not specified] of the members of each branch.

9. Resd. that a National Judiciary be established to consist of one or more supreme tribunals [courts], and of inferior [lower] tribunals to be chosen by the National Legislature, to hold their offices during good behavior. . . . That the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal [Supreme Court] to hear [cases] and determine [make decisions] in the [last] resort. . . . [Cases will include] impeachments of any national officers, and questions which may involve the national peace and harmony.

10. Resolvd. that provision ought to be made for the admission of States . . . with the consent of a number of voices in the National legislature less than the whole.

11. Resd. that a Republican Government [by elected representatives of the people] . . . ought to be guaranteed by the United States to each State.

12. Resd. that provision ought to be made for the continuance of Congress [Articles of Confederation] . . . until a given day after the reform of the articles of Union [new Constitution] shall be adopted, and for the completion of all their engagements [old business].

13. Resd. that provision ought to be made for the amendment of the Articles of Union [new Constitution] whensoever it shall seem necessary, and that the assent of the National Legislature ought not to be required thereto.

14. Resd. that the Legislative, Executive & Judiciary powers within the several States ought to be bound by oath to support the articles of Union [new Constitution].

15. Resd. that the [constitutional changes] which shall be offered . . . by the Convention ought . . . to be submitted to Representatives [of the people in State conventions], recommended by the several [State] Legislatures to be expressly chosen by the people to consider & decide thereon [whether to approve or reject the proposed Constitution].

Reviewing Ideas in the Virginia Plan

Read the following statements and decide whether or not each statement is a correct description or interpretation of ideas in the Virginia Plan of 1787. If the statement is correct, answer YES. If it is incorrect, answer NO. IDENTIFY THE NUMBER OF THE RESOLUTION(S) in the Virginia Plan that includes evidence to support each answer. If the statement cannot be judged correct or incorrect, based on evidence in the Virginia Plan, then answer UNCERTAIN. Be prepared to explain or justify your answers in terms of the contents of the Virginia Plan.

1. The national government shall have two branches.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

2. Members of the National Legislature will be selected by the free inhabitants of the States.
YES ___ NO___ UNCERTAIN ___ RESOLUTION # ___

3. The overarching purpose of the Virginia Plan was to establish a government of the United States that would be able to achieve the stated objectives of the Articles of Confederation.

YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

4. The National Legislature shall have the power to veto acts of State governments that contradict the Articles of Union (the Constitution of the United States).
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

5. The National Legislature shall have power to use force against State governments that resist or refuse to obey laws of the national government.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

6. The national government will have a Supreme Court with authority to make decisions in cases involving the impeachment of national government officials.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

7. The National Legislature shall have power to make amendments to the Articles of Union (Constitution of the United States).
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

8. The National Executive will have sufficient power to effectively carry out laws.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

9. Officials of the State governments will be obligated to support the Articles of Union (Constitution of the United States).
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

10. All State governments will be organized as republics, and the national government will guarantee that this form of government will be maintained in each State.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

11. There shall be a single chief executive elected by the free inhabitants of the States.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

12. The National Executive will have power to veto legislation enacted by the National Legislature.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

13. Members of the National Executive and the National Judiciary will constitute a Council of Revision with power to review and reject acts of the National Legislature.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

14. There will be a Congress or National Legislature composed of two branches.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

15. The National Legislature will have power to override vetoes of its acts by the Council of Revision.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

16. The government of the United States will be superior to the State governments.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

17. The powers of the national government will be separated among three branches: legislative, executive, and judicial.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

18. Each State would retain its "sovereignty, freedom, and independence" as provided in ARTICLE II of the Articles of Confederation.
YES ___ NO ___ UNCERTAIN ___ RESOLUTION # ___

Reactions to the Virginia Plan in the Federal Convention

The delegates realized that the Virginia Plan went far beyond the Congressional Resolution that gave the Federal Convention "the sole and express purpose of revising the Articles of Confederation." However, Madison and his supporters pointed to another phrase in the same Resolution of Congress that said the reason for the Convention was "to render the federal constitution adequate to the exigencies of Government & the preservation of the Union." Madison argued that the Convention could legitimately go beyond mere revision of the Articles of Confederation because only a new Constitution could provide an adequate government.

Madison was proposing through the Virginia Plan the establishment of a national form of government that would replace the confederal form of the Articles, which was an alliance of independent states. In this confederal type of government the States had created a central government to serve certain of their needs, but they granted only very limited powers to it while retaining their own sovereignty and freedom of action. By contrast, a purely national government has all powers of government, and other units of government exist primarily to carry out the directives of the dominant central authority.

The Virginia Plan implied some limited powers for the States (Madison referred to them as *federal* features). So his plan was not purely a national government, but it was predominantly national in its characteristics, which eventually led to a split in the Convention.

However, before the threat of rupture emerged, Madison and his allies succeeded in setting the agenda for the Federal Convention. From May 30 to June 13, the delegates gave their full attention to fine-tuning the Virginia Plan. Important revisions that they made to the Virginia Plan are summarized below:

- Three-year terms of office for the House of Representatives and seven years for the Senate.
- State legislatures to elect members of the Senate.
- A single chief executive to be elected by the National Legislature for only one seven-year term and to be subject to impeachment and removal from office for "malpractices or neglect of duty."
- An executive power to veto acts of the National Legislature, which could be overridden by a two-thirds vote of both Houses.
- Deletion of the Council of Revision (see Resolution No. 8 of the original plan).
- Deletion of the authority to use force against States (see Resolution No. 6).

On June 15, William Paterson of New Jersey presented an alternative to the Convention, which was called the New Jersey Plan. John Lansing of New York said that Paterson's proposal "sustains the sovereignty of the respective states." He claimed that the New Jersey plan called for a federal form of government in contrast to the national form proposed by the Virginia Plan. "The States will never sacrifice their essential rights to a national government," Lansing argued.

Major provisions of the New Jersey plan are summarized below. In part this plan was a defense of states' rights within a federal system, but it also provided for a central government that would be supreme within its sphere of authority.

The *first resolution* endorsed the Articles of Confederation: they "ought to be so revised, corrected & enlarged as to render the federal Constitution adequate to the exigencies of government, & the preservation of the Union."

Resolutions Nos. 2 and 3 affirmed the one-house structure of Congress and its powers as stated in the Articles of Confederation. Several additional powers were proposed, such as powers to levy taxes and compel States to pay them and to regulate trade among the States and with foreign nations.

Resolution No. 4 proposed establishment of an executive branch of several persons selected by Congress, who would have power to administer laws, appoint other executive officials to assist them, and direct the military forces of the United States.

Resolution No. 5 provided for establishment of a federal judicial branch headed by a Supreme Court whose members would be appointed by the executive branch.

Resolution No. 6 was a startling affirmation of the authority of the federal government in relation to the States: "All acts of the United States in Congress made by virtue and in pursuance of the powers hereby & the Articles of Confederation vested in them, and all Treaties made & ratified under the authority of the United States shall be the supreme law of the respective States ... the Judiciary of the several States shall be bound thereby in their decisions ... if any State, or any body of men in any State shall oppose or prevent [the enforcement of federal laws or treaties] the federal Executive shall be authorized ... to enforce and compel an obedience to such Acts, or an observance of such Treaties."

Vigorous debate followed introduction of the New Jersey Plan. James Madison made a persuasive speech against it on June 19. Then seven states voted against the New Jersey Plan (Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia). Three states voted for it (New York, New Jersey, Delaware). Maryland's vote was split. The New Jersey Plan was defeated, and the Convention moved ahead to make its decisions in terms of the Virginia Plan; although much of it would be modified before completion of the Federal Convention on September 17, 1787.

Delegates at the Federal Convention continued to debate and change provisions of the Virginia Plan until it was shaped into the Constitution of 1787. One of the most important changes was the Great Compromise of July 16, which settled arguments about how to organize the two houses of Congress called for by the Virginia Plan.

The Great Compromise provided that the Senate would be organized according to confederal principles of the New Jersey Plan. There would be two Senators (and two votes) for each State, whether large or small in population, and the legislature of each State would select the two Senators from that State.

The House of Representatives would be organized according to nationalist principles of the Virginia Plan. The number of Representatives (and the number of votes) for each state would vary according to population size (larger states would have more Representatives). Eligible voters in each state would elect their Representatives.

James Madison reported in his journal the views of Oliver Ellsworth of Connecticut, one of the designers of the Great Compromise: "The proportional representation in the first branch was conformable to the national principle and would secure the large states against the small. An equality of voices in the second branch was conformable to the federal principle and was necessary to secure the small states against the large."

Another change that softened feelings of New Jersey Plan supporters was dropping the word "national" from the document, as in "National Legislature" or "National Executive." However, despite several changes in and additions to the Virginia Plan, as introduced May 29 and revised on June 13, these resolutions were the framework in terms of which the Constitution of 1787 was formed.

Reviewing Facts and Main Ideas

1. What were major accomplishments in public service of James Madison?
2. Why did Madison write to George Washington on April 16, 1787?
3. What was the Virginia Plan?
4. Why was the Virginia Plan an important contribution to the Federal Convention?

Interpreting Ideas in Documents

1. What was the influence of the Virginia Plan on the organization of Congress? (Compare provisions of the Virginia Plan with Article I, Sections 1–4, the Constitution of 1787.)
2. Did the Virginia Plan or the New Jersey Plan have more influence on the organization of the executive branch? (Compare provisions of the Virginia Plan and New Jersey Plan with Article II, Section 1, the Constitution of 1787.)
3. What was the influence of the Virginia Plan on the organization of the judicial branch? (Compare provisions of the Virginia Plan with Article III, Sections 1–2, the Constitution of 1787.)
4. What was the influence of the Virginia Plan on the relationships of the States to the federal government? (Compare provisions of the Virginia Plan with Article IV, Sections 3–4 and Article VI, the Constitution of 1787.)
5. Which provisions of the Virginia Plan were NOT included in the Constitution of 1787?

Making Judgments About Ideas in Documents

1. What if someone disputed claims that James Madison is the primary author of the Virginia Plan. How could you use evidence in Madison's letter to Washington (April 16, 1787) to support the conclusion that Madison's ideas on constitutional government are included centrally in the Virginia Plan?
2. What is your evaluation of two parts of the Virginia Plan that were not included in the 1787 Constitution? (Would constitutional government in the United States be improved by these two ideas?)
   a. The veto power of the national government over actions of state governments proposed in Resolution No. 6.
   b. The Council of Revision proposed in Resolution No. 8.

PART IV

Introduction

The Preamble to the Constitution of the United States

Teaching Plan for Lesson 4

Lesson 4: The Origins and Purposes of the Preamble to the U.S. Constitution

IV
Introduction

Popular sovereignty, the idea that a government's power is based on the will of the people, has been a central concern of Americans from the 18th century until the present. It was a key issue of the 1780s. When the Framers of the Constitution met in their Federal Convention of 1787, they confronted this basic question about popular control of government: Does federal power flow directly from *all* the people of the nation or from the people only through the respective *states* of the federal union?

Their response is found in the opening words of the Constitution's Preamble: "We the People of the United States. . . ." Though the Preamble is brief, a one-sentence statement, it is a very important part of the Constitution.

The Preamble is not merely an introduction to the body of the Constitution which follows. Rather, it states the civic ideals that guide our national purpose. The great, enduring goals of the United States—union, justice, liberty, order, the welfare of our people, internal peace, the defense of the nation—all are reflected in the Preamble's 52 eloquent words.

The Preamble, like the remainder of the Constitution, was debated and discussed, even attacked, during the critical process by which the Constitution was ratified in 1787–1788. The Constitution was accepted, and its Preamble has been an important part of the nation's enduring civic tradition. The clarity, power, and timeless idealism of the Preamble remains an important part of constitutional government in the United States.

According to Donald S. Lutz, one reason that people write a constitution is to "define a way of life—the moral values, major principles, and definition of justice toward which a people aim" (*The Origins of American Constitutionalism*, 1988, 16). The Preamble introduces the overarching ideals of the frame of government, which is set forth in the subsequent articles of the Constitution.

Part IV includes an article by Donald Lutz: "The Preamble to the Constitution of the United States." Professor Lutz discusses the origins of the Preamble in America's "foundation documents"—the early covenants, compacts, and state constitutions of the colonial era and the first years of independence. He examines as well the purpose and meaning of the Preamble's language.

Lutz's essay is followed by a Teaching Plan and a Lesson for high school students: "The Origins and Purposes of the Preamble to the U.S. Constitution." The Teaching Plan and Lesson provide materials for high school history and government courses on basic ideas in the American civic tradition.

The Preamble to the Constitution of the United States

by DONALD S. LUTZ

The Preamble to the United States Constitution not only introduces the document; it encapsulates and reflects the various sources of, and influences upon, our constitutional tradition. The covenants and compacts written by colonists during the early seventeenth century first established the form and general elements of American constitutions. Early in the eighteenth century the ideas and values of Harrington and the Commonwealth thinkers, Florentine republicanism as exemplified by Machiavelli, and the contract theorists, especially Hobbes and Locke, provided additional philosophical underpinnings. These three strands of thought were woven into the fabric of the covenant/compact tradition, and the synthesis achieved fullest expression in the state constitutions written between 1776 and 1787. Beginning in the 1770's, the ideas of the Scottish Enlightenment writers, particularly Hume, and of the European Enlightenment more generally, especially Montesquieu, were injected into American political thought. The Federalists who assembled in Philadelphia in the summer of 1787 brought Enlightenment ideas into American constitutionalism, but the founders had additional models for government in the early state constitutions. Our constitutional tradition also responded to critical political situations. Constitutions are never written in a political vacuum, but tend to present a "snapshot" of the balance of political forces at the time of their writing. Our analysis of the Preamble's form and content, then, must necessarily focus upon the early colonial foundation documents, the early state constitutions, the proceedings of the Constitutional Covention, and the historical events surrounding the writing of the Constitution, including the matter of the Articles of Confederation.

Form of The Documents

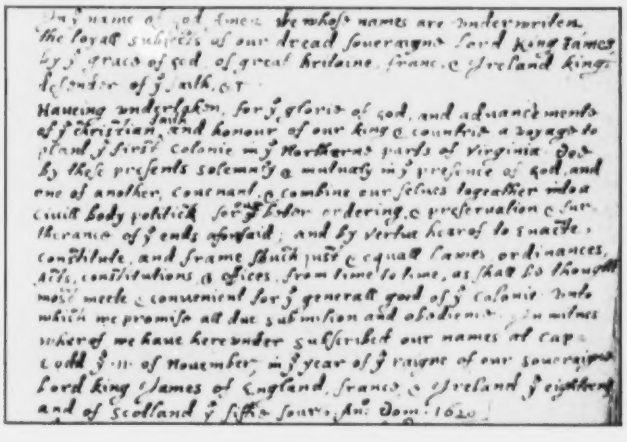
By 1787 Americans had been writing documents of political foundation for over a century and a half. Although technically governed by a charter from the English Crown, colonists to America were invariably granted the right by these charters to erect and conduct local government as long as the laws passed were not in contradiction with English law. Thus, from the very beginning Americans had considerable control over their local political affairs; the Mayflower Compact is a good example of the foundation documents they wrote for themselves to formalize local government. These brief documents were direct descendants of religious covenants developed by Calvinist-oriented Protestants and influenced by the Old Testament, especially the book of Deuteronomy.

In the name of God, amen. We whose names are underwritten . . . do, by these presents, covenant and combine ourselves together into a civil body politic for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof do enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and officers, from time to time, as shall be thought most meet and convenient for the general good of the colony, to which we promise all due submission and obedience. . . .

Mayflower Compact, in part, adopted November 11, 1620. Text taken from F. N. Thorpe, ed., *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*, Vol. III, p. 1841.

Dozens of similar local documents of foundation would be written in the next twenty years throughout the colonies. Typically these documents would embody the principles of popular sovereignty, majority rule, and political equality among citizens, through there was some qualification of these principles in practice. Ideally, government was to be based upon the consent of the people, either directly or indirectly through representatives elected for that purpose, and decisions were to be derived from an open and deliberate discussion of what best served the common good.

The colonists drew up longer and longer codes of law, altered and expanded their political systems, and brought the basics of their government into single documents which laid out fundamental principles and institutions. At this point, the earlier documents of foundation tended to become introductory statements of the grounds and intention of



Excerpt from the Mayflower Compact, 1620.
Archives Division, Commonwealth of Massachusetts

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these longer proto-constitutions. In 1636 the citizens of Plymouth, Massachusetts wrote the first true constitution in American history, and used as a preface the Plymouth agreement which they had adopted the same day.

> *We, the associates of New-Plymouth coming hither as freeborn subjects of the State of England endowed with all and singular the privileges belonging to such being assembled; doe ordain Constitute and enact that noe act imposition law or ordinance be made or imposed upon us at present, or to come but such as shall be imposed by Consent of the body of associates or their representatives legally assembled; which is according to the free liberties of the State of England.*
>
> **Plymouth Agreement, from the preface to the Pilgrim Code of Law, adopted November 15, 1636. Text is taken from Harry M. Ward, *Statism in Plymouth Colony*, p. 17.**

Between 1620 and 1776, simple foundation documents written by the colonists, and derived from religious covenants both in form and content, became secularized preambles to modern constitutions. During this evolution of a constitutional tradition, Americans usually included five foundation elements in their documents of political foundation. First, there was an explanation of why the document was necessary. Second, the document created, defined or redefined a people, a community of individuals. Third, it laid out the fundamental values or goals which described the kind of people this community was or hoped to become. Fourth, the document formally established a civil society by creating a government. Fifth and finally, the document laid out the specific design for the governmental institutions through which the community would make collective decisions.

It became standard practice to combine the first four foundation elements with a bill of rights as a long introduction to the body of the document. In the early state constitutions, the section after the preamble would often begin with, "Part II: The Constitution or Form of Government," and only then launch into an institutional description of the sort we usually associate with constitutions. This structure made the bills of rights part of the preamble, by implication prior to, and thus not part of, the constitution proper. The Preamble to the United States Constitution did not have a bill of rights to help it carry the load of the four foundation elements, but it is easy to see the long documentary tradition of which it is a part.

The Preamble to the federal Constitution begins "We the people," another structural device taken from early state constitutions. Most of the colonial documents written between 1620 and 1650 began with the phrase "We the undersigned," and the signatures invariably represented all the free, property-owning adult males in the community. Using only fifty-two words, the Preamble to the Constitution efficiently contains the requisite foundation elements. It creates a people, the citizens of the United States, where the Articles of Confederation had recognized only a league of states, (each of which was constituted a people by their respective constitutions). We are given the reasons the document is needed at the same time that we have a list of fundamental values or goals—union, justice, domestic tranquility, the common defense, the general welfare, and liberty. The words "do ordain and establish this Constitution" create a government. Thus, we have the first four foundation elements at hand, ready to be joined by the fifth, the institutional description, in the body of the document.

Content

We have been implying a direct connection in form between the preambles of the early state constitutions and our national Preamble, but it must be remembered that the framers of our national Constitution met in Philadelphia in the summer of 1787 in order to overcome the weaknesses in the Articles of Confederation which failed to create an adequate national government. State constitutions did not have as their purpose the design of a national government. Thus, the founders could not extract such ideas from them. In fact, the framers in many instances were reacting against what they found in the more parochial state constitutions, including their preambles. Nevertheless, just as bicameralism, representation, and a host of other ideas flowed into the national document from the state constitutions as a result of the familiar and persistent patterns carried in the heads of the framers from living under the state constitutions, so too did the Preamble. The national Preamble derived partly through the apposition of the state preambles, and partly in opposition to them.

Furthermore, the state constitutions had an impact on the national Constitution by the simple fact of the existence of the states prior to the birth of the nation. The proposed national Constitution had to incorporate a federal system to acknowledge the autonomous purview of the states. Thus, the states are mentioned in the national document, either directly or by clear implication, over fifty

times in forty-two separate sections. Our political system is defined by an interlocking system of constitutions, and the state documents are an essential part of a proper, complete United States Constitution. The preambles to the state constitutions set the pattern for preambles to constitutions, introduced other portions of the interlocking system, and served as positive and negative examples of content for the framers.

Since the preambles and bills of rights of the early state constitutions reflected the colonial tradition, they contained many English Whig, republican, and contractarian elements. But they also contained elements derived from the more recent Enlightenment tradition, elements which first showed up in force in the Declaration of Independence. To the earlier values were added life, liberty, and happiness.

> *We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed; That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. . . .*

Beginning of the second paragraph of the Declaration of Independence, adopted July 4, 1776.

The Declaration had a tremendous impact upon the early state constitutions. Eight of them borrowed language directly from the Declaration, and the 1777 New York Constitution reprinted the entire Declaration of Independence as part of its preamble.

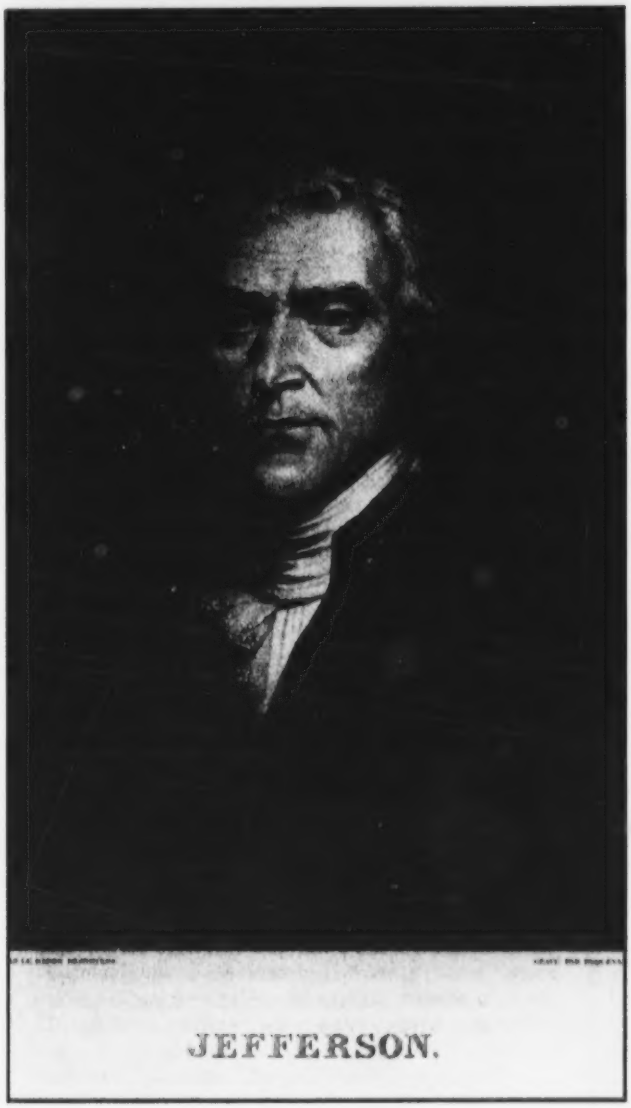
In 1776 the state of Virginia adopted a constitution, and its preamble and the Virginia Bill of Rights resemble the Declaration at least in part because Thomas Jefferson was centrally involved with both.

> *We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular adequate mode of civil polity is speedily adopted . . . do ordain and declare the future form of government of Virginia to be as followeth . . . .*

The last paragraph of a 1,500 word introductory statement to the 1776 Virginia Constitution. Text taken from F.N. Thorpe, ed., *The Federal and State Constitutions*, Vol. VII, p. 3815.

> *That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.*

Section 1 of the Bill of Rights of the 1776 Virginia Constitution. Text from Thorpe, p. 3813.



Thomas Jefferson, engraving by F.J. Dequevauviller
National Portrait Gallery, Smithsonian Institution, Washington, D.C.

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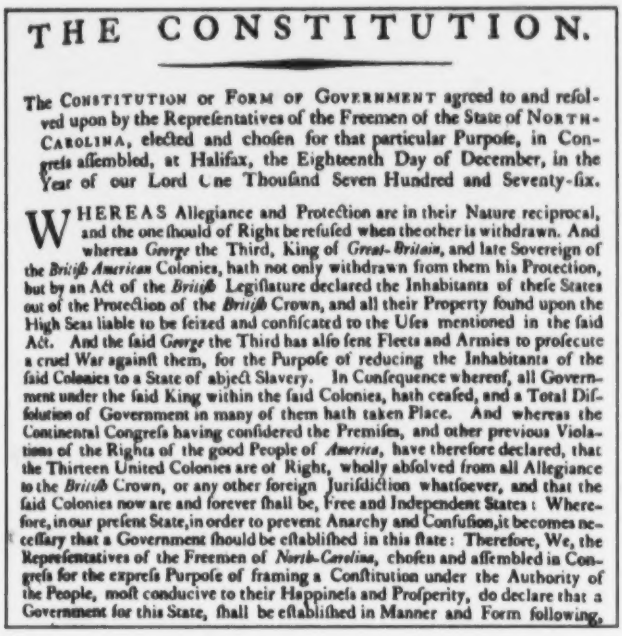


THE CONSTITUTION.

The CONSTITUTION or FORM OF GOVERNMENT agreed to and reſolved upon by the Repreſentatives of the Freemen of the State of NORTH-CAROLINA, elected and choſen for that particular Purpoſe, in Congreſs aſſembled, at Halifax, the Eighteenth Day of December, in the Year of our Lord One Thouſand Seven Hundred and Seventy-ſix.

WHEREAS Allegiance and Protection are in their Nature reciprocal, and the one ſhould of Right be refuſed when the other is withdrawn. And whereas *George* the Third, King of *Great-Britain*, and late Sovereign of the *Britiſh American* Colonies, hath not only withdrawn from them his Protection, but by an Act of the *Britiſh* Legiſlature declared the Inhabitants of theſe States out of the Protection of the *Britiſh* Crown, and all their Property found upon the High Seas liable to be ſeized and confiſcated to the Uſes mentioned in the ſaid Act. And the ſaid *George* the Third has alſo ſent Fleets and Armies to proſecute a cruel War againſt them, for the Purpoſe of reducing the Inhabitants of the ſaid Colonies to a State of abject Slavery. In Conſequence whereof, all Government under the ſaid King within the ſaid Colonies, hath ceaſed, and a Total Diſſolution of Government in many of them hath taken Place. And whereas the Continental Congreſs having conſidered the Premiſes, and other previous Violations of the Rights of the good People of *America*, have therefore declared, that the Thirteen United Colonies are of Right, wholly abſolved from all Allegiance to the *Britiſh* Crown, or any other foreign Juriſdiction whatſoever, and that the ſaid Colonies now are and forever ſhall be, Free and Independent States: Wherefore, in our preſent State, in order to prevent Anarchy and Confuſion, it becomes neceſſary that a Government ſhould be eſtabliſhed in this ſtate: Therefore, We, the Repreſentatives of the Freemen of *North-Carolina*, choſen and aſſembled in Congreſs for the expreſs Purpoſe of framing a Conſtitution under the Authority of the People, moſt conducive to their Happineſs and Proſperity, do declare that a Government for this State, ſhall be eſtabliſhed in Manner and Form following,

Preamble to 1776 North Carolina state constitution. *Archives and Records Section, North Carolina Department of Cultural Resources*

It thereafter became typical to use the first article or two of the respective state constitution's bill of rights to complete the laying out of fundamental values begun in the state preamble proper. These long introductions to state constitutions, combining a preamble with a bill of rights to lay out the first four foundation elements, were usually several thousand words long. The preambles themselves averaged about 425 words, ranging in length from the 42 words in the 1784 New Hampshire document to over 1,300 words in the 1776 South Carolina and 1777 Vermont documents. The New Hampshire Constitution is instructive for comparing a short, northern document with the long Virginia document written eight years earlier.

> *The people inhabiting the territory formerly called the Province of New Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent Body-politic, or State, by the name of the State of New Hampshire.*

Entire preamble to Part II—The Form of Government, of the 1784 New Hampshire Constitution. Text taken from Thorpe, p. 2458.

> *All men are born equally free and independent; therefore, all government of right originates from the people, is founded in consent, and instituted for the general good.*
> *All men have certain natural, essential, and inherent rights; among which are—the enjoying and defending life and liberty—acquiring, possessing and protecting property—and in a word, of seeking and obtaining happiness.*

Articles I and II of the Bill of Rights to the 1784 New Hampshire Constitution. Text from Thorpe, p. 2453.

The essential contents are the same as found in the 1776 Virginia document, but the format differs a bit. Here we have the first two articles of the bill of rights containing more explicitly what has been, and in most instances still will be, contained in the preamble. The preamble has been moved to Part II, the beginning of the Constitution proper. Together, the preamble and first two articles of the bill of rights contain the values first enunciated during the colonial era—popular consent, the general good, etc.—as well as the more recently appropriated Enlightenment values of life, liberty, and happiness. Two more brief extracts from state preambles will show how the formulas can vary.

> *Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary, that government should be established in this State; therefore we, the Representatives of the freemen of North Carolina, chosen and assembled in Congress, for the express purpose of framing a Constitution under the authority of the people, most conducive to their happiness and prosperity, do declare, that a government for this State shall be established, in manner and form following . . . .*

Last paragraph of the preamble to the 1776 North Carolina Constitution. Text from Thorpe, pp. 2789-90.

> *We, therefore, the representatives of the people, from whom all power originates, and for whose benefit all government is intended, by virtue of the power delegated to us, do ordain and declare, and it is hereby ordained and declared, that the following rules and regulations be adopted for the future government of this state . . . .*

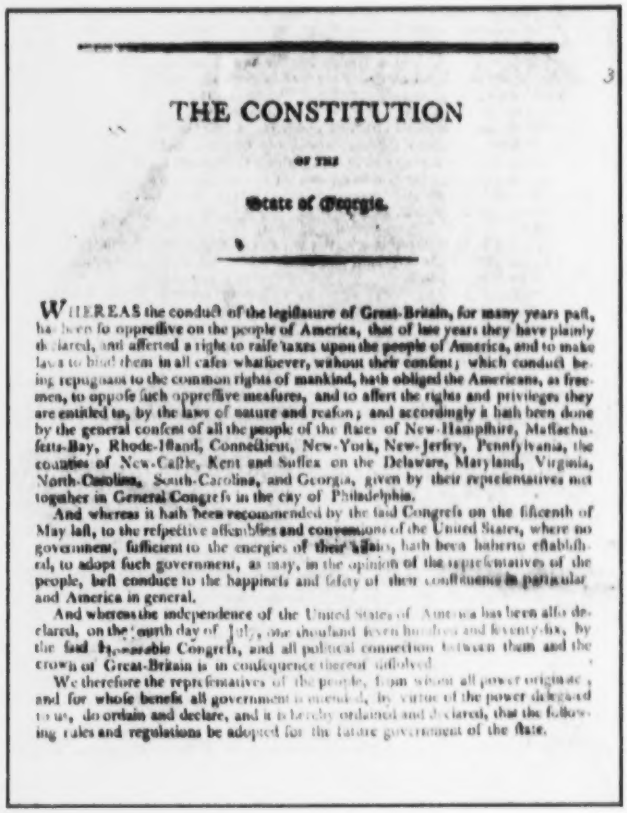
Last paragraph of the preamble to the 1777 Georgia Constitution. Text taken from Thorpe, 778.

It is too easy to view the national Preamble as simply a more efficient, more abstract rendering of the equivalent in the state constitutions. The state preambles and associated portions of their respective bills of rights lay out not only a richer set of goals than does the national Preamble, but also a somewhat different set of values and goals that reflect radical Whig and Biblical sources. The state documents speak of the consent of the people, the common good, deliberative processes, God's dis-

pensation, equality, the ability of people to form and change government, as well as the common defense, liberty, domestic tranquility, and the passage of these things to posterity. Whereas the national Preamble speaks of justice, the state preambles describe in some detail the nature of fair and equal treatment of all citizens. The national Preamble speaks of the general welfare, but the state preambles use the alternative language of "happiness and prosperity" in the 1776 North Carolina Constitution, and the "common good" of the 1780 Massachusetts Constitution. The state formulations tend to be richer in that they imply a community of interests rather than simply material sufficiency.

The Federalists who wrote the Constitution hoped to create an effective national government with an emphasis upon effectiveness. Not wishing to impinge on American freedoms, they nonetheless saw a serious need to overcome the instability at the state level that appeared to arise from excessive state autonomy. They had no need to emphasize liberty, consent, majority rule and legislative supremacy because these values were protected by state constitutions, and the federal government had a different role to play. To dramatize the point, we reproduce here two state preambles which best summarize the political theory operative at the state level, with its ringing language derived from contractarian, radical Whig and covenantal sources. They are full and explicit. The first, the 1776 Pennsylvania Preamble, introduced the most radically egalitarian constitution of the era. The second, the Preamble to the 1780 Massachusetts Constitution, introduced a traditional, mainstream document that was to become the model for later state constitutions. As we will see, the Federalists were having neither.

> *Whereas all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness . . . . We the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, confessing the goodness of the great Governor of the universe . . . in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society . . . as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against any particular class, sect, or denomination of men whatever, do by virtue of the authority vested in us by our constituents, ordain, declare, and establish, the following* Declaration of Rights *and* Frame of Government, *to be the CONSTITUTION of the commonwealth . . . .*



THE CONSTITUTION

OF THE

State of Georgia.

WHEREAS the conduct of the legislature of Great-Britain, for many years past, has been so oppreſſive on the people of America, that of late years they have plainly declared, and aſſerted a right to raiſe taxes upon the people of America, and to make laws to bind them in all caſes whatſoever, without their conſent; which conduct being repugnant to the common rights of mankind, hath obliged the Americans, as freemen, to oppoſe ſuch oppreſſive meaſures, and to aſſert the rights and privileges they are entitled to, by the laws of nature and reaſon; and accordingly it hath been done by the general conſent of all the people of the ſtates of New-Hampſhire, Maſſachuſetts-Bay, Rhode-Iſland, Connecticut, New-York, New-Jerſey, Pennſylvania, the counties of New-Caſtle, Kent and Suſſex on the Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, given by their repreſentatives met together in General Congreſs in the city of Philadelphia.

And whereas it hath been recommended by the ſaid Congreſs on the ſifteenth of May laſt, to the reſpective aſſemblies and conventions of the United States, where no government, ſufficient to the exigencies of their affairs, hath been hitherto eſtabliſhed, to adopt ſuch government, as may, in the opinion of the repreſentatives of the people, beſt conduce to the happineſs and ſafety of their conſtituents in particular and America in general.

And whereas the independence of the United States of America has been alſo declared, on the fourth day of July, one thouſand ſeven hundred and ſeventy-ſix, by the ſaid honourable Congreſs, and all political connection between them and the crown of Great-Britain is in conſequence thereof diſſolved.

We therefore the repreſentatives of the people, from whom all power originates, and for whoſe benefit all government is inſtituted, by virtue of the power delegated to us, do ordain and declare, and it is hereby ordained and declared, that the following rules and regulations be adopted for the future government of the ſtate.

Preamble to the 1777 Georgia state constitution. *Georgia Department of Archives and History.*

About 40% of the preamble to the 1776 Pennsylvania Constitution. Text taken from Thorpe. pp. 3081-82.

> *That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.*

Article I of the Declaration of Rights of the 1776 Pennsylvania Constitution. Taken from Thorpe, p. 3082.

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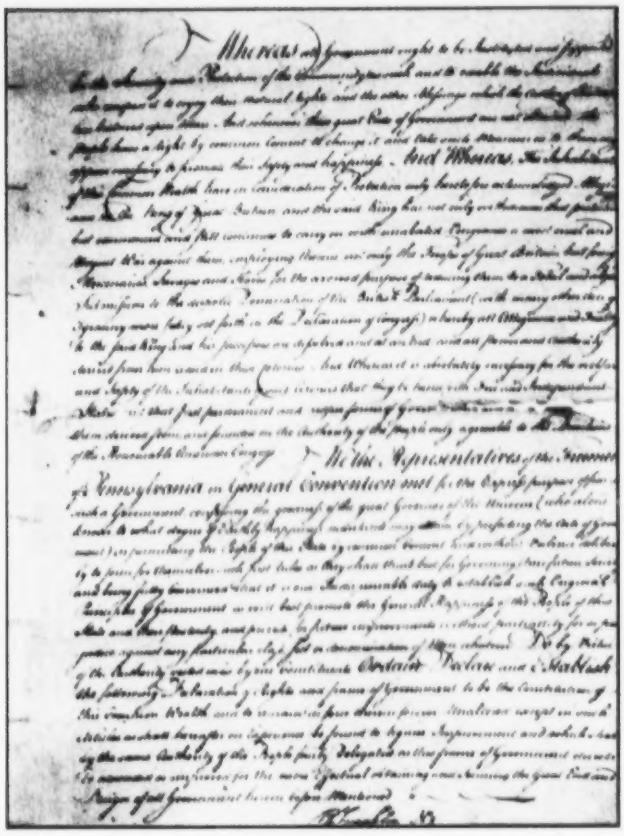

Portion of preamble to Pennsylvania Declaration of Rights 1776. RG 26. Division of Archives and Manuscripts, Pennsylvania Historical and Museum Commission.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish, the following Declaration of Rights, *and* Frame of Government, *as the* CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

Entire Preamble to the 1780 Massachusetts Constitution. Text taken from Thorpe, pp. 1888-89.

Neither of these preambles could have introduced the United States Constitution. Whether mainstream or radical, large state or small state, northern or southern, the consistent pattern and content of American foundation documents from 1620 to 1784 is clear. The Federalists framing the national Preamble found themselves needing a preamble, unable to use much of what was to be had at the state level, yet seeking some basis for continuity that would echo the basic symbols of the American political tradition.

Edmund Randolph introduced a statement, apparently edited in part by John Rutledge, which urged the Convention in Philadelphia to stick to "simple and precise language, and general propositions." He also argued that a preamble should not designate the ends of government, nor contain the language of covenants or compacts; they were, he believed, working with a people and government already in being, not creating a new people or polity. Leaving aside the question of how language can be precise and general at the same time, or what they thought they were doing in Philadelphia if not creating a new people or polity, it is clear that Randolph was among those not wishing to repeat the form or content of state preambles in the national preamble. At several points in the discussion it was suggested that any preamble should indicate only that the Articles of Confederation were inadequate for achieving the general happiness, and thus a new constitution was being written. The framers, and especially those on the Committee of Style and Arrangement, chose instead to write a Preamble that looked superficially similar to those in the state documents. The result was briefer and contained language that was less precise and more general. It thereby appeared to include many traditional values and goals, yet it removed references to those things which the Federalists found most objectionable for a national government—the emphasis upon relatively direct popular consent and equality, the dominance of the legislative branch, a

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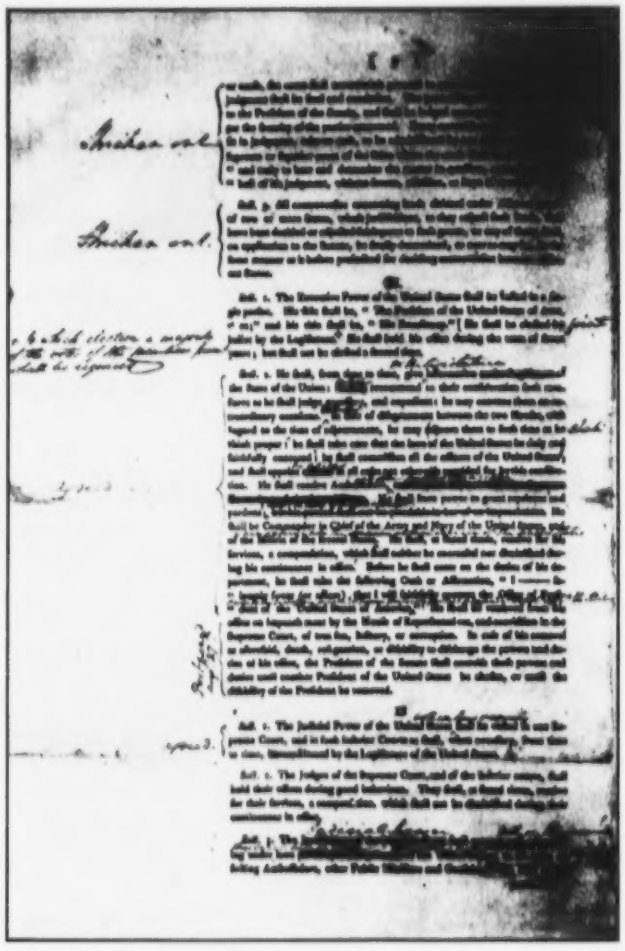
moralistic stance with respect to politics, and the tendency for the states to act as if each were an independent nation. The national Preamble also reflects the greatest concerns of the nationalists—union, as opposed to a league of squabbling states; justice, as opposed to legislatures responding to rapidly shifting majorities; domestic tranquility, as opposed to the kind of insurrections that had already occurred in Massachusetts, Pennsylvania, and North Carolina, insurrections that the Federalists felt stemmed from too much popular consent, too much legislative supremacy, and too much equality in state governments. As for the common defense, the general welfare, and liberty, the framers were drawing here upon the first American national constitution, the Articles of Confederation.

Early in the Convention proceedings, Edmund Randolph of Virginia introduced the most nationalistic of all the proposed constitutions—the Virginia Plan. His very first resolution used the tactic of taking the language found in the Articles as the measure of what was to be done—to achieve a common defense, enhance security of liberty, and promote the general welfare. These goals implied the contents for a preamble to any new constitution the Convention might produce.

> *The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare. . . .*
>
> **First sentence of Article III, the Articles of Confederation, adopted November 15, 1777.**

> *Resolved, that the articles of confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution, namely, common defence, security of liberty and general welfare.*
>
> **The first motion by Edmund Randolph introducing the Virginia Plan at the Constitutional Convention, May 29, 1787.**

Randolph's approach had the virtue of making the proposed Constitution appear to be a fulfillment of the Articles, and thus almost a natural development. However, mid-way through the Convention, a tentative preamble was adopted that began, "We the people of the States of New-Hampshire, Massachusetts," etc. It too had the virtue of implying a connection with the Articles, perhaps too much of one, since it still connoted a loose league of sovereign states.



Preliminary draft of federal preamble. *National Archives.*

> *We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.*
>
> **The Preamble to the proposed United States Constitution as it went to the Committee of Style and Arrangement from the full convention at the end of August, 1787.**

The amendment of this proposed Preamble by the Committee of Style and Arrangement demonstrated an understanding of both politics and the importance of rhetoric. The Committee kept "We the people" which resonated so strongly with American foundation documents since 1620, and replaced the list of states with "of the United States of America," thus rendering the Preamble in accord with the Federalist nationalist perspective. "Common defence, security of liberty, and the general welfare" were resurrected from the early Randolph resolution, and thus from the Articles of Confederation. This addition not only lent a touch of continuity and a dollop of legitimacy, it also resonated with some of the language found in the

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state preambles, such as "happiness and prosperity," "the common good," "the security and protection of the community," "safety and happiness," and "safety and tranquility." A rereading of the passages from the state constitutions here provided will show the connections. "Union," "justice," and "domestic tranquility," Federalist preoccupations, were inserted before "common defense," "security of liberty," and "general welfare." For the last sentence, the Committee on Style and Arrangement revised slightly the final clause from the original Preamble that the Convention had devised.

The result looked, on a quick reading, to be similar to the preambles found in the state constitutions, but it actually differed from the state formulations in being more general, and in omitting the conventional language of earlier preambles. The Preamble did borrow directly from the long-standing American tradition of foundation documents by beginning with "We the people," and by including the traditional four foundation elements. The version that had been given to the Committee on Style and Arrangement by the Convention for polishing had contained only three elements—it did not list any goals or provide any hint of why a new Constitution was needed. The Preamble to the United States Constitution thus is linked with a long line of American documents, beginning with the Mayflower Compact, and running up through the Declaration of Independence, the Articles of Confederation, and many of the early state constitutions. Properly understood, the Preamble is not only an introduction to our national Constitution but is also emblematic of our constitutional history.

> *WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*
>
> **The Preamble to the Constitution of the United States, adopted September 17, 1787.**

Select Bibliography

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Donald S. Lutz is associate professor of political science at the University of Houston. He is the editor, with Charles S. Hyneman, of *American Political Writing During the Founding Era, 1760–1805* (Liberty Press, 1982).

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IV
Teaching Plan for Lesson 4
The Origins and Purposes of the Preamble to the U.S. Constitution

Objectives

Students are expected to

1) know the importance of the following documents: (a) the Mayflower Compact, (b) preambles to selected state constitutions of the founding period, (c) opening statements of the Articles of Confederation, (d) the first draft of a preamble to the United States Constitution, and (e) the final Preamble to the United States Constitution;

2) identify similarities to and differences from the Preamble in four primary documents: (a) the Mayflower Compact, (b) the preamble of the 1780 Massachusetts Constitution, (c) the introductory statement to the 1776 Virginia Constitution, and (d) the Articles of Confederation;

3) understand the significance of the Preamble's language in endowing the nation with a federal system of government;

4) identify and explain the four main parts of the Preamble;

5) understand and be able to discuss arguments against the Preamble during the ratification process.

Preparing to Teach the Lesson

Read the article in Part IV by Donald Lutz, "The Preamble to the Constitution of the United States." Pay special attention to these parts of Lutz's article: (a) the paragraphs listing the major elements of preambles and identifying those elements in the Constitution's Preamble and (b) the portion describing the nation's "foundation documents."

Read Lesson 4 in Part IV and give special attention to the wording of the preliminary and final drafts of the Preamble and to the reasons for the changes in the Preamble's language.

Plan to spend two class periods on this Lesson.

Opening the Lesson

Read aloud (or ask one of your students to read aloud) the Preamble to the United States Constitution. Ask students to mentally note the words and ideas of the Preamble.

Inform students that the main points of this Lesson are to demonstrate that (1) the Preamble has its origins in earlier American political documents, (2) the Preamble has specific, identified purposes, and (3) the Preamble is a very important part of the United States Constitution.

Developing the Lesson

Ask students to read the Lesson and to prepare answers to the questions in the sections on "Reviewing Facts and Main Ideas" and "Examining Evidence in Documents."

Conduct a quick recitation on the eight questions in the "Review" section. Then move to the "Examining Evidence in Documents" section, which includes questions that require a close reading and careful interpretation of the primary sources, and a major emphasis on the Preamble to the 1787 Constitution. Require students to support and justify answers with references to specific parts of the documents in this lesson. Encourage students to challenge the answers of classmates by demanding evidence from the primary sources that support responses to questions.

Concluding the Lesson

Conclude the Lesson by assigning the questions in the final category, "Making Judgments About Ideas in Documents." Divide the class into four or five groups of 4–7 students, depending on the size of the class. Ask the members of each group to discuss the three parts of the "Making Judgments" section.

Then call upon one person from one of the groups to respond to item 1. After this person reports his/her answers, invite other members of the group to agree or disagree with the person's response to item 1. Then call upon members of other groups to concur or disagree with the responses to item 1 reported by members of the group invited to start the full-class discussion. Repeat this procedure in order to conduct a full-class discussion of items 2 and 3.

IV
Lesson 4
The Origins and Purposes of the Preamble to the U.S. Constitution

Concern hung heavily over the leaders of the small group of Pilgrims gathered on board the tiny ship *Mayflower* on November 11, 1620. Though at last in the promised land of the New World, the Pilgrims faced an unexpected crisis. Their original charter had authorized them to settle in Virginia, but a navigational error had placed them hundreds of miles north of their true destination. Instead of landing on the mild shores of Virginia, they now found themselves anchored off the gray and weatherbeaten coast of New England.

And, to make matters worse, some of the non-Pilgrims aboard were questioning the colony's authority over them. William Bradford recorded the threats of the mutineers. The rebels had "let fall from them," Bradford wrote in *Of Plymouth Plantation*, "That when they came ashore they would use their own liberty, for none had power to command them, the patent . . . being for Virginia and not for New England which belonged to another government. . . ."

To solve the dilemma facing them and to insure that orderly government would prevail in their new colony, the Pilgrim leaders drafted a covenant or agreement for governing the community.

The Mayflower Compact
November 11, 1620

In the name of God, Amen. We, whose names are underwritten . . . do, by these presents, solemnly and mutually in the presence of God and one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal Laws, Ordinances, Acts, Constitutions and Offices, from time to time, as shall be thought most meet and convenient for the general good of the colony to which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names. . . .

The Pilgrims used their Mayflower Compact to establish and maintain law and order in the name of the people of their colony, Plymouth. In 1636, they wrote a complete constitution or plan for government, *The Plymouth Agreement*, to establish the rules by which they would govern themselves. They wrote a preface or preamble to their constitution to proclaim what they wanted to do, and why they wanted to do it. Later, Plymouth became part of the Massachusetts colony.

The Plymouth Agreement, 1636

We, the associates of New-Plymouth coming hither as freeborn subjects of the State of England endowed with all and singular the privileges belonging to such being assembled; doe ordain Constitute and enact that noe act imposition law or ordinance be made or imposed upon us at present, or to come but such as shall be imposed by Consent of the body of associates or their representatives legally assembled; which is according to the free liberties of the State of England.

Nearly a century and a half later, the same fundamental concerns of governance were raised anew. The people of thirteen North American states declared independence from Britain and wrote new constitutions by which to govern themselves. Each of these new state constitutions, written from 1776–1780, included a preamble that stated purposes and values of government based on popular sovereignty—the will of the people. An example is shown in the next column.

Preamble to the 1780
Massachusetts Constitution

The end of the institution, maintenance and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish, the following Declaration of Rights, and Frame of Government, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

During the 1780s, citizens of the thirteen United States of America struggled to create a workable government for their new federal union. Gathered in 1787, behind the red brick walls of the old Pennsyl-

vania Statehouse in Philadelphia, the delegates to the Constitutional Convention debated the issues of order, freedom, justice, and federal union.

Now, however, the question of governance applied not to a colony but to thirteen former colonies that had become the United States of America. Under the ineffectiveness of the Articles of Confederation, the darkening clouds of dissension crowded the once bright sky of the nation. Instead of merely worrying about the cooperation of potentially unruly individuals, the delegates faced the crisis of how to, in some way, unite thirteen states which seemingly could not—or would not—work together.

In the midst of this great effort, on which the very future of the nation hinged, the delegates had the benefit of the long history of written constitutions, covenants, and compacts that collectively made up what has since been called the nation's "foundation documents." The Mayflower Compact and other colonial covenants were such documents. The early state constitutions, the ineffective Articles of Confederation, and the Declaration of Independence were other "foundation documents" used by the delegates.

In that rich lode, the delegates found materials they could use to prepare the Preamble to the Constitution of the United States. The earliest of the foundation documents had influenced the enlarged and expanded frames of government—the early constitutions of the colonies and states—which developed later. The language, structure, and purposes of these documents were in the minds of those who gave us the Preamble that was finally approved (along with the rest of the Constitution) at the end of the Constitutional Convention, September 17, 1787.

The earlier preambles—as the root of the word in the Latin term meaning "to walk in front" indicates—served obviously to introduce or precede the various frames of government which followed. The preamble to the new constitution to the state of Virginia, passed in 1776, is a good example of its use in an introductory role.

The Last Paragraph of the 1,500 Word Introductory Statement to the 1776 Virginia Constitution

We therefore, the delegates and representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular adequate mode of civil polity is speedily adopted ... do ordain and declare the future form of government of Virginia to be as followeth....

Preambles, however, were more than mere introductions. They also had four other important functions central to government.

These functions were to (1) explain why the document which followed was necessary, (2) define who was to be governed by the document, (3) list the values of the people being governed, and (4) formally establish the government for the colony or state. Frequently the preamble also contained a bill of rights for the people.

These same functions are clearly present in the Preamble that ultimately was approved by the Convention, but not in the initial preamble drafted by the Framers, as a comparison will show.

Preamble to the First Printed Draft of the Constitution, August 6, 1787

We the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.

Compare the preceding document to the final draft of the Preamble, which is presented below.

Preamble to the Constitution of 1787

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

This second version of the Preamble was placed into the delegates' hands by a specially appointed Committee of Style.

Gouverneur Morris, a 35-year-old Pennsylvanian, did most of the actual writing of the document. The changes made by Morris and his committee in the final version were both dramatic and significant.

In this final draft, Morris's skilled pen had included the four elements of a preamble. The words "We the People of the United States" specifically defined who was to be governed by the Constitution, which is one of the four functions of a preamble. Two other functions, the reasons or need for the government and the values of the people, were expressed in the phrases "in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity". The fourth function of the Preamble—to formally establish a government—was accomplished by the closing phrase "do ordain and establish this Constitution for the United States of America."

Historically perhaps the most significant change was in the Preamble's opening words in which Morris had replaced "We the people of the states of" followed by a listing of all the states, with the simple phrase "We the People of the United States".

The change was made for two reasons. First, a modification in ratification procedures had taken place since the original preamble was drafted. Unanimous consent for ratification was no longer required. Instead the approval of only nine states was needed. But which nine would ratify? Because no one could know, the listing of states became meaningless.

The second reason for the change was that the phrase "We the People of the United States" carried infinitely more power than "We the people of the states of...." It said completely and without equivocation that the new government was

the product of the people of the *whole* nation—not the people of the individual *states*. It was an unmistakable and powerful statement of the government's origins. The linkage of the words "We the People" with the closing phrase, "do ordain and establish this Constitution", gave a clear signal that the document was meant to be the formal, official, and binding law of the land, created and authenticated by the *people* of that land. Thus, the fundamental idea of popular sovereignty was emphatically and unambiguously stated.

When the Committee on Style returned its version of the Constitution to the Convention on September 12, the Preamble was accepted without objection. It remained intact when the Constitution was at last signed by the delegates to the Convention on September 17.

Objections to the Preamble, as well as to other parts of the new document, were not long in coming once open debate began. One of those to see at once the importance of the Preamble's wording was one of the country's original revolutionaries, Patrick Henry of Virginia. Henry, who had stayed home from the Constitutional Convention because he "smelt a rat," differed strongly with those who had signed the Constitution. "What right had they to say 'We the People?' " Henry demanded. "Who authorized them to speak the language of 'We the People' instead of We the States?" he asked. Henry's opposition reflected his deep-seated distrust of a strong central government, and his belief that the power of a federal government should not come directly from the people of the whole nation. Rather, Henry would have emphasized the separate states as the primary units of the federal system.

The Preamble also came under fire at the Pennsylvania ratifying convention. There delegate William Findley opposed the Preamble for reasons similar to Henry's. Findley too believed the Preamble should have read "We the States. . . ." Only under a government which drew its power directly from the states and not from the people of the whole country, he reasoned, could the effective existence of the states continue. Henry and Findley preferred state sovereignty as the basis of the federal union. For them, popular sovereignty was properly expressed within each state, as the foundation only of the state government.

Henry, Findley, and their supporters claimed that they, not the Framers of the 1787 Constitution, were the true believers in federation. In their minds, the states and not the people were the source of political power in the federal system. The political philosophy of Henry, Findley, and their supporters was reflected by the Articles of Confederation, which officially had become the nation's first "constitution" in 1781. The Articles did not have a clearly defined preamble like those present in most of the foundation documents. It did, however, have an opening sentence which listed the states which were to be governed under the Articles and made no reference to the people. The purposes normally found in a preamble were stated in Article III. See the following parts of the Articles of Confederation.

Opening Sentence and Article III of the Articles of Confederation, March 1, 1781

Articles of Confederation and perpetual union between the states of New-Hampshire, Massachusetts-bay, Rhode-island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, on account of religion, sovereignty, trade or any other pretence whatsoever.

This language, unlike that of the Preamble to the Constitution, gave the source of governmental power to the states and mentioned the people not at all.

James Wilson, a Pennsylvanian who had signed the Constitution, justified the wording of the Preamble to the 1787 Constitution: "My position is that the sovereignty resides in the *people* [not in state governments]. . . . In order to recognize this leading principle, the proposed system sets out with a declaration [the Preamble] that its existence depends on the supreme *authority of the people*. . . ." Wilson's views on popular sovereignty prevailed in 1788 when the new Constitution was ratified.

The power of the Preamble's clear and straightforward language has prevailed in constitutional conflicts. Its words supported Chief Justice John Marshall's famous opinion in *McCulloch v. Maryland* (1819). In that case the Supreme Court determined that a state (Maryland) lacked the power to dominate any agency of the federal government of the United States. Marshall said, "The government of the Union . . . is . . . truly a government of the people. In form and substance it emanated from them, its powers are granted by them and are to be exercised directly on them. . . ."

The words of the Preamble also supported Senator Daniel Webster (Massachusetts) in his "Great Debate" with Robert Hayne (South Carolina) in 1830. During the course of his argument, Webster refuted the argument that the states could nullify, or declare invalid, federal laws. This was not possible, said Webster, because the *people* of the United States, not the individual *states* of North America, had made the supreme law of the land—the Constitution of the United States.

The test of time has shown the enduring qualities of the Constitution's Preamble. The concepts embedded in its 52 words remain at the heart of government today in the United States. They state as clearly now, as they did in Philadelphia more than 200 years ago, the purposes and values of a government of, by, and for the people.

Reviewing Facts and Main Ideas

1. What important events in the development of American constitutional government are associated with the following dates? Explain the significance of each date.
   a. 1620
   b. 1636
   c. 1776
   d. 1780
   e. 1781
   f. 1787

2. What is the Preamble to the Constitution of the United States?

3. What are the four main functions or elements of a preamble to a constitution?

4. What is popular sovereignty?

5. How was popular sovereignty associated with the creation of constitutions in the United States?

6. Who were two major opponents of the wording of the Preamble in its final version?

7. What were the main objections to the Preamble's wording?

8. What was James Wilson's argument for the Preamble's wording?

Examining Evidence in Documents

1. Examine the Mayflower Compact to answer the following questions.
   a. What phrases identify why the compact was written?
   b. What did the Mayflower Compact allow the colony's leaders to do?

2. Examine the preambles or introductory statements to the Plymouth Agreement, the Massachusetts Constitution of 1780, and the Virginia Constitution of 1776.
   a. How are these documents similar to the Preamble to the 1787 Constitution?
   b. How are these documents different from the Preamble to the 1787 Constitution?

3. Examine the Preamble to the first printed draft of the Constitution (August 6, 1787) and the Preamble approved by the Constitutional Convention on September 17, 1787. Identify two main differences in the two documents.

4. Compare the Preamble to the 1787 Constitution with the introductory statements to the Articles of Confederation. What are the similarities and differences?

5. Examine the Preamble to the Constitution. Answer the following questions.
   a. What phrase specifically defines who is to be governed by the Constitution of 1787?
   b. Identify the phrases which identify the reasons for and goals of the new government.
   c. What part of the Preamble formally made the 1787 Constitution the binding law of the land?
   d. Why does the language of the final draft of the Preamble contribute greatly to the power of the national government compared to that of the state governments?

Making Judgments about Ideas in Documents

1. The Preamble to the Constitution of 1787 expresses goals or ends for the government of the United States. Rank these goals to indicate which one is most important, next in importance, and so on to the one that, in your judgment, is least important. Explain your ranking of these goals.

2. The last goal or end stated in the Preamble is "secure the Blessings of Liberty to ourselves and our Posterity." Is this the culminating or ultimate goal of constitutional government in the United States? Should it be the ultimate or overarching goal? Explain.

3. This lesson includes these examples of preambles or introductory statements for constitutions: (a) Plymouth Agreement, (b) Virginia Constitution of 1776, (c) Massachusetts Constitution of 1780, (d) Articles of Confederation, and (e) Preamble to the Constitution of the United States. Rank these statements from best to worst. Why did you make these judgments?

Part V

Introduction

Writing the Constitution: The Report of the Committee of Detail

Teaching Plan for Lesson 5

Lesson 5: The Report of the Committee of Detail at the Federal Convention

V
Introduction

Many years after the Constitutional Convention, James Madison wrote that the drafting of the Constitution "was the work of many heads and many hands." Certainly this remark of the "Father of the Constitution" can be considered merely another example of Madison's modesty. And yet, there is much merit in what James Madison wrote. Numerous individuals contributed to the writing of the Constitution. Among the major contributors were the five members of the Committee of Detail: Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, James Wilson of Pennsylvania, John Rutledge of South Carolina, and Edmund Randolph of Virginia. Rutledge was chairman of the Committee.

From the end of May through most of July, 1787, delegates to the Convention had compiled twenty-three resolutions as they debated the structure and powers of the government they were creating. The delegates were ready to express their sundry resolutions in an orderly and legalistic manner. Thus, they appointed the five-member Committee and gave it ten days, from July 26 to August 6, to complete its task.

At first glance, the Report of the Committee of Detail could be viewed as a "summary" and "half-finished" version of the work of the Convention delegates. The eminent scholar of the Federal Convention, Max Farrand, saw the work of the Committee of Detail as much more important. Farrand remarked that the Committee's report was "a distinct stage in the development of the Constitution." Another expert, James H. Hutson, has also noted that the members of the committee did not see themselves as mere "copy editors." Rather, they went "beyond the bare list of resolutions approved by the Convention and . . . add[ed] provisions proper for the constitution of a great nation." Thus, the Report of the Committee of Detail was the first real draft of the Constitution, and, according to Hutson, it "pointed the way to the completed Constitution."

Part V includes an essay by James H. Hutson: "Writing the Constitution: The Report of the Committee of Detail, August 6, 1787." Hutson documents the Committee of Detail's use of the Articles of Confederation in writing the first draft of the Constitution and discusses the ideas and innovations of the Committee that became part of the final version of the Constitution.

Hutson's essay is followed by a Teaching Plan and a Lesson for high school students. These materials provide high school students an opportunity to examine the Report of the Committee of Detail closely and to compare the Report with the Articles of Confederation and the Constitution. Thus, students can learn that the Report of the Committee of Detail was an important first draft of the Constitution of 1787.

DOCUMENTS

Writing the Constitution: the Report of the Committee of Detail, August 6, 1787

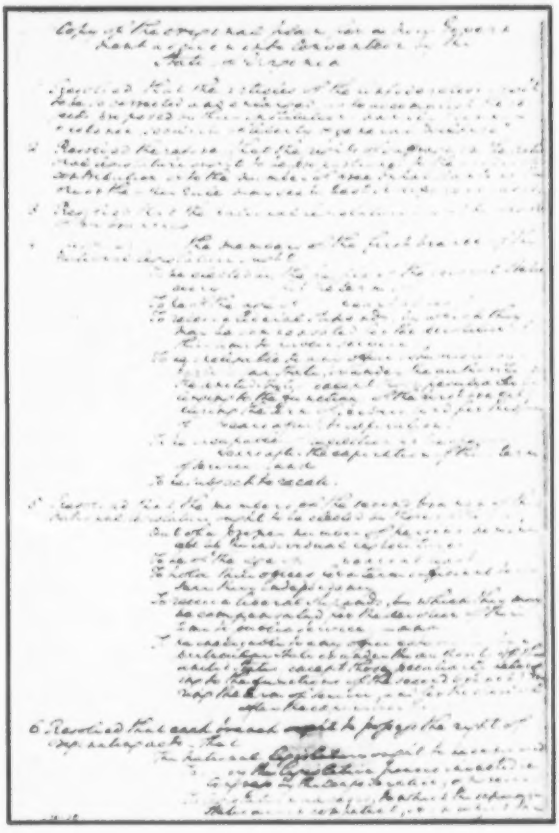
by JAMES H. HUTSON

Of nothing were the founders of this nation prouder than that the Constitution of the United States was formed by the peaceful process of deliberation and debate rather than by "accident and force" to which they believed other nations owed their political systems. The first arena for the debate was the Constitutional Convention which convened at Philadelphia on May 25, 1787, and continued without interruption for two months. During this time, the delegates confronted the crucial issue of whether the existing "constitution" of the nation, the Articles of Confederation, should be retained and revised or whether an entirely new instrument of government should be created. Although the delegates chose to craft a new plan, they included both old and new elements, and made the government "partly national, partly federal." On July 26, after two months of sketching out the new structure of government, the Convention adjourned to permit a committee of five of its ablest members to summarize—to codify—in its words, to "detail"—what it had accomplished. The Report of this Committee of Detail, presented to the Convention on August 6, 1787, is the subject of this paper.

The initial attempt at the Convention to describe a constitution, the first in a series of documents leading to the Committee of Detail Report, was the "Virginia Plan," presented by the Virginia delegation on May 29, 1787. Virginia's delegates believed, James Madison recalled later, that "from the early and prominent part taken by that state in bringing about the Convention some initiative step might be expected from them." Accordingly, they worked up a series of fifteen resolutions—many no more than suggestions—which Governor Edmund Randolph introduced as soon as the convention officially convened.

Resolving itself into a Committee of the Whole, the Convention debated the Virginia Plan for two weeks and produced the next important document in the progression toward the Constitution: the Committee of the Whole House Report of June 13. Containing nineteen resolutions, the Committee Report was more specific than its predecessor—a characteristic of each successive document in the stream leading to the Constitution. Where the Virginia Plan, for example, had left blank the terms of service in the first and second branches of the national legislature, the Committee Report specified the duration—three and seven years respectively. More importantly, the Committee Report refined the Virginia Plan's proposal that representation in the legislature be based on numbers or wealth by specifying that it be "in proportion to the whole number of white and other free citizens and inhabitants" and three-fifths of the slave population in both houses.

The small states at the convention considered the Committee of the Whole Report a betrayal, for it deprived them of the power—an equal vote with the large states—which the Articles of Confederation conferred upon them. They responded on June 15 by presenting the New Jersey Plan, so-called because it was introduced on their behalf by William Patterson of New Jersey, which substantially strengthened the national government, but retained the principle of one equal vote in the federal legislature for each state. For the next month the Convention wrangled over the issue of repre-



1. The Virginia Plan, in George Washington's hand. *George Washington Papers, Library of Congress.*

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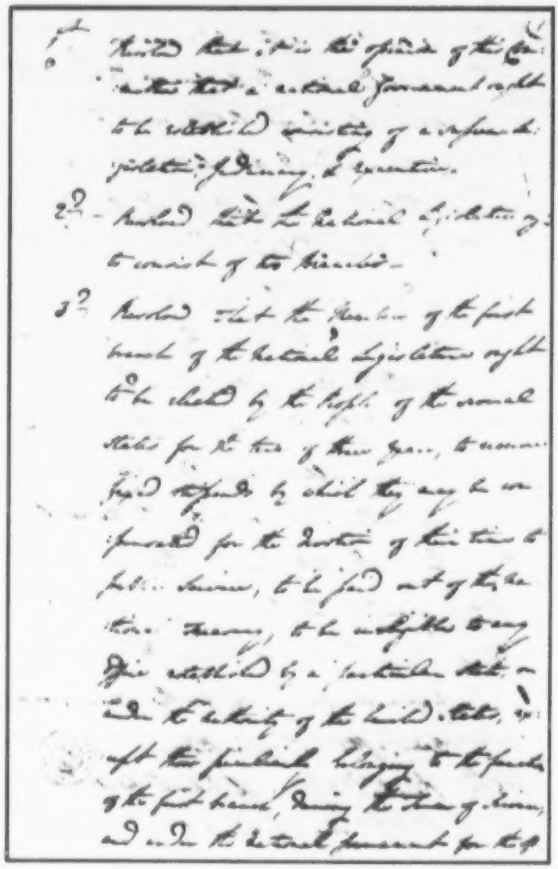
sentation in the new government, the large states insisting on representation proportioned to the population, the small on equality of representation. The issue became so acrimonious that it threatened to break up the Convention. It was finally resolved by the famous "Great Compromise" of July 16, 1787, which gave the large states proportional representation in the first branch of the legislature and the small states equal representation in the second branch. For the next ten days, the Convention debated and in some case revised the resolutions of the Committee of the Whole Report of June 13, which it had been doing, at time permitted, in the intervals between the battle over representation. On July 26 it adjourned until August 6, so that a Committee of Detail, elected on July 24, could "report a Constitution conformable to the resolutions passed by the Convention."

This Committee of Detail was composed of five of the Convention's ablest men, representing all geographical regions—John Rutledge of South Carolina, Edmund Randolph of Virginia, James Wilson of Pennsylvania, Oliver Ellsworth of Connecticut, and Nathaniel Gorham of Massachusetts. Several working documents left by the Committee survive, principally in James Wilson's papers, which show that Edmund Randolph wrote a preliminary draft of the Committee's report which Rutledge corrected. Wilson then appears to have assumed the major responsibility for composition and to have written the draft adopted as the final report. When printed, it ran to seven pages and contained twenty-three separate articles.

The Committee's approach, in preparing the Report, was to "treat of the legislative, judiciary and executive in their order, and afterwards, of the miscellaneous subjects, as they occur, bringing together all the resolutions, belonging to the same point, howsoever they may be scattered about." But the Committee was not simply a group of copy editors, arranging the Convention's proceedings in proper order and polishing its language to resonate with the proper sonority. Convention records do not indicate it, but the Committee must have been informally charged to use its imagination, to go beyond the bare list of resolutions approved by the Convention and, on its own initiative, add provisions proper for the constitution of a great nation. This it did and, as a result, the Committee report contains three components: resolutions of the Convention, incorporated more or less as adopted on the floor; amplifications, by the addition of details, of Convention actions; and innovations.



2. Committee of the Whole House Report, June 13, 1787, in Charles Cotesworth Pinckney's hand. Pinckney Papers, Library of Congress.

Among the first group of provisions were those, adopted from the Virginia Plan and Committee of the Whole Report, which gave the national government its structure: legislative, executive, and judicial powers separated from each other, a bicameral legislature whose acts were subject to a qualified executive veto, and a government with powers to act directly on the country's citizens rather than through the medium of sovereign states, as under the Articles of Confederation.

It was the second group of clauses which demonstrated why the term "detail" was used to describe the Committee and its work, for here the Committee defined and specified the extent and meaning of the resolutions adopted by the Conven-

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tion. In detailing the powers of the new government, the Committee tried to read the Convention's mind by inferring what it intended. Judging by the general satisfaction with its report, it did so quite successfully.

One example of the way in which the Committee defined the powers of the new government by adding details to general resolutions of the Convention is the clause relating to the jurisdiction of the Supreme Court. As received from the Convention, the Court clause read:

> *That the jurisdiction of the national Judiciary shall extend to Cases arising under the Laws passed by the general Legislature, and to such other Questions as involve the national Peace and Harmony.*

It left the hands of the Committee reading:

> *The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting Ambassadors, other Public Ministers, and Consuls; to the trial of impeachments of Officers of the United States; to all cases of Admiralty and maritime jurisdiction; to controversies between two or more States (except such as shall regard Territory or Jurisdiction), between a State and citizens of another State, between Citizens of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects. In cases of impeachment, cases affecting Ambassadors, other Public Ministers, and Consuls, and those in which a State shall be a party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions and under such regulations as the Legislature shall make. The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President of the United States) in the manner and under the limitations which it shall think proper, to such inferior Courts as it shall constitute from time to time.*

Another instance concerns the power of the legislature. The Convention gave the Committee the following ill-defined directive:

James Wilson, sepia on artist board by Longacre. National Portrait Gallery, Smithsonian Institution, Washington, D.C.

Edmund Randolph, fresco by Constatino Brumidi. Library of Congress.

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That the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

The Committee distilled these vague phrases into the following specific list of powers, concluding with what contemporaries called "the sweeping clause," the famous necessary and proper clause:

The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts, and excises;

To regulate commerce with foreign nations, and among the several States;

To establish a uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish Post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union; enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this constitution, in the government of the United States, or in any department or officer thereof.

Oliver Ellsworth, engraving by G. MacKenzie. Library of Congress.

Among the Committee's innovations were the series of prohibitions on state activities; the states were forbidden to coin money, emit bills of credit, lay imposts, keep military forces in peacetime and to do numerous other things. The Convention had never itemized activities which it would forbid the states, although it is conceivable that the Committee was inspired in drawing this section by Madison's futile efforts to control state legislatures by granting a veto over their acts to the national legislature. Also innovative were the prohibitions laid on activities of the national legislature, including the prevention of its interfering with the importation of slaves; here the Committee was responding to the lobbying of Charles Cotesworth Pinckney, who had warned in the Convention that the support of the Deep South depended on an unimpeded supply of slaves.

Other innovations were the Committee's attempt to define treason and its punishment and its labored efforts to deal with land disputes between different states. Close examination of Article IX, Sections 2 and 3, of the Committee Report, which addressed the problem of land controversies, demonstrates how the Committee of Detail borrowed from the Articles of Confederation.

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Committee of Detail

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers:— Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall, by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the legislature, or the executive authority, of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directd to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate,

Articles of Confederation

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other clause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress by drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without shewing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court,

John Rutledge, engraving after the painting by John Trumbull. Library of Congress.

Nathaniel Gorham, etching by unidentified artist. Library of Congress.

and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward.'

Section. 3. All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.

or to appear to defend their claim, or cause, the court shall pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

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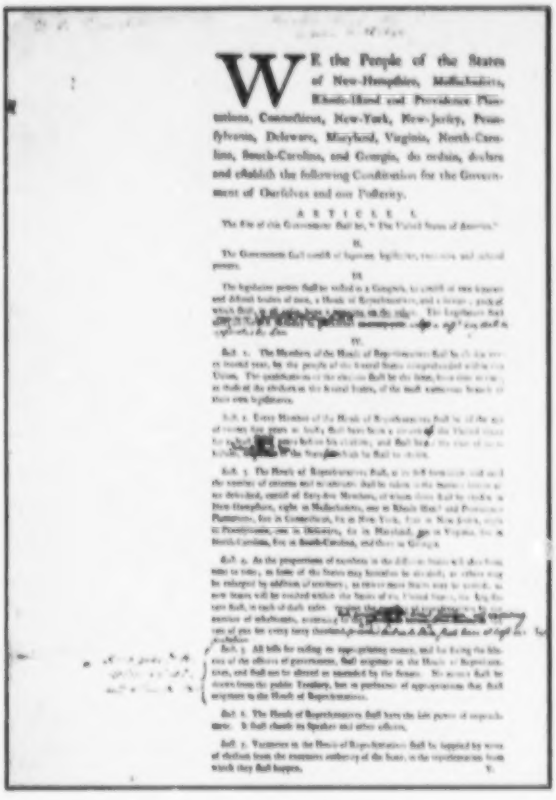
3. Committee of Detail Report, August 6, 1787, with William Samuel Johnson's annotations. *Peter Force Papers, Library of Congress.*



WE the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Ourselves and our Posterity.

ARTICLE I.

The Stile of this Government shall be, "The United States of America."

II.

The Government shall consist of Supreme Legislative, Executive and Judicial powers.

III.

The Legislative powers shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives, and a Senate; each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year, and such meetings shall be

IV.

Sect. 1. The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of electors in the several States, of the most numerous branch of their own Legislatures.

Sect. 2. Every Member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen of the United States for the space of three years before his election, and shall be, at the time of his election, a resident of the State he shall be chosen in.

Sect. 3. The House of Representatives shall, at its first meeting after the first election, and the members thereof shall assemble, shall be taken by the Secretary of the United States, or some person appointed by him for that purpose, from the returns of the several States, and shall be divided, as equally as may be, into three classes, of which those of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year; so that one third may be chosen every year. The members of each class shall be eligible to the succeeding House of Representatives, but for no longer term in any term of six years. The House of Representatives shall, from time to time, as the number of citizens and inhabitants shall be ascertained, be regulated by the Legislature, and the number of Representatives apportioned among the several States which may be included within this Union, according to the following ratio, viz. one Member for every forty thousand inhabitants of each State, reserving to each State, however, one Member, though it should contain less than forty thousand inhabitants, until the number of Representatives shall amount to sixty. After the number of Representatives shall amount to sixty, the Legislature shall regulate the number of Representatives by the number of inhabitants, according to the above ratio, or such other ratio as they shall judge proper, yet so that the number of Representatives shall never be less than sixty, nor more than one for every forty thousand inhabitants, until the number of Representatives shall amount to two hundred; after which, the number of Representatives shall never be less than two hundred, nor more than one for every forty thousand inhabitants.

Sect. 4. As the proportions of numbers in the different States will alter from time to time, as some of the States may become more populous than others, provision shall be made by the Legislature, that direct taxation may be proportioned to representation. And as the number of Representatives may be increased by additions of inhabitants, in the old States, or by the admission of new States, the quota of each State shall be altered, from time to time, in the same proportion.

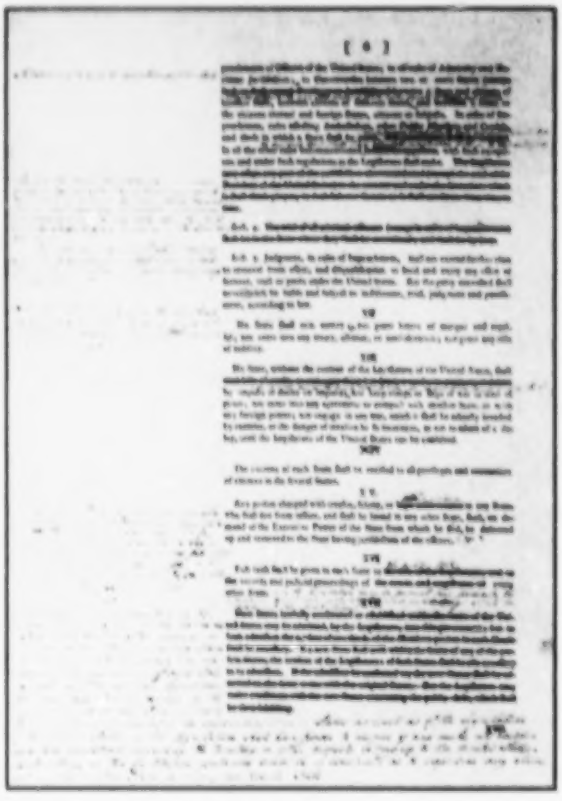
Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which they shall happen.

V.

4. Committee of Detail Report, August 6, 1787, with William Jackson's annotations. *William Samuel Johnson Papers, Library of Congress.*



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The extent of the Committee's borrowing from the Articles is also demonstrated by comparing articles XV and XVI of its Report with the conclusion of article IV in the Articles:

Committee of Detail

Art. XV. Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offence.

Art. XVI. Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state.

Articles of Confederation

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Another section of Article IV in the Articles of Confederation—the stipulation that citizens of each state "shall be entitled to all privileges and

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The Convention must have expected the Committee of Detail to submit a well-crafted document because it ordered the Philadelphia firm of Dunlap and Claypoole to print sixty copies of the Committee Report which were distributed to the members on August 6. This procedure was a departure from the previous methods of disseminating documents, for all earlier documents were submitted by their sponsors in longhand to the Convention Secretary to whom members repaired and made their own longhand copies (see illustrations one and two). Apparently upon orders from the Convention, Dunlap and Claypoole crowded the text of the report to the right margin of the paper, leaving a large space on the left side of the document. This enabled some delegates to use their copy of the report as a legislative diary, entering additions and corrections daily as the Convention debated the document through August and into September (see illustration four). Other delegates, John Dickinson, for example, used their margins for reflections on the Convention proceedings, which are, in some cases, as revealing as notes on the debates. The marginalia on the Committee of Detail Report, and on some other constitutional documents as well, has never been adequately studied and presents a challenge to scholarly ingenuity.

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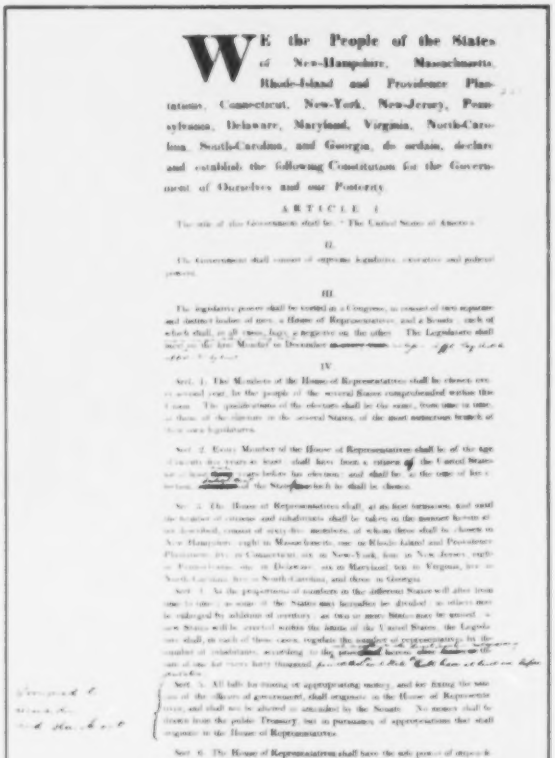

WE the People of the States of New-Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare and establish the following Constitution for the Government of Themselves and our Posterity.

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IV.

Sect. 1. The Members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own Legislatures.

Sect. 2. Every Member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen of the United States [illegible] shall be, at the time of his election, and shall be, at the time of his service, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken on the pursuant thereto, consist of sixty-five members, of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in the different States will alter from time to time; as some of the States may hereafter be divided; as others may be enlarged by additions of territory; as two or more States may be united; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the [illegible] before mentioned, allowing one representative for every forty thousand [illegible]

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public Treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the State, in the representation from which they shall happen.

immunities" of citizens in the other states—was incorporated into the Committee Report and Article I of the Articles—"The Stile of this confederacy shall be the 'United States of America' "—was brought over into the Report with the change of one significant word, confederacy to government.

By using the language of the Articles of Confederation, the Committee of Detail tried to convey an impression of continuity between the Constitution it was writing and the Articles which would demonstrate that the Convention had not violated its mandate to do no more than revise the Articles. The Committee, of course, had poured so much new wine in the Old Confederation bottle that the notion that the Constitution which it was preparing was a mere revision of the Articles was recognized by everyone as a fiction. The fiction became more transparent as the Convention in August deleted the Committee's clauses about state land controversies and modified or omitted other language which connected the Constitution to the Articles. Nevertheless, certain phrases from the Articles—the term "articles" itself, the "full faith" clause, "privileges and immunities"—survive in the final draft of the Constitution. Further, if the form of the two documents is compared—each having a preamble, a series of articles, itemization of legislative powers and prohibitions—the debt of the new document to its predecessor is clear, a debt which should not be forgotten as we celebrate the Bicentennial of the Constitution.

The Committee of Detail presented its report to the Convention on August 6. The members debated the report until September 10 when they adjourned to await the work of the Committee of Style, which had been appointed to prepare a new version of the Constitution. Between August 6 and September 10 the Convention made several significant changes in the Report, the most important being the alteration of the method of electing the president from selection by the national legislature to choice by electors. Aside from this change and a few other important alterations such as removing from the Senate the power to make treaties and appoint Supreme Court justices, the constitution which emerged from the Committee of Style and which was adopted on September 17 did not differ widely from the Committee of Detail Report. The titles which the Committee of Detail gave to officers and institutions of the new goverment—President, Speaker, Congress, Senate, House of Representatives, Supreme Court—many of its arresting phrases—"We the People," "necessary and proper," "State of the Union"—the structure of government, its powers and limitations, all appear, with modifications, in the Constitution as it exists today. The Committee of Detail Report did not, therefore, represent a middling, half-finished version of the Convention's proceedings; rather, it pointed the way to the completed Constitution.

An interesting footnote to the history of the Committee of Detail Report is that Peter Force, for reasons not clearly understood, reprinted the document in the 1820s or 1830s (see illustration five). The Force printing is easily distinguished from the original document by observing the different type used (compare illustrations five and three). Force's paper also differs appreciably. Force or someone in his pay annotated copies of his printing to enhance their appearance of authenticity. Libraries have been deceived by these annotations into believing that the Force printing was an original document. Students and prospective purchasers should be on their guard for these reprintings and for other purportedly original documents which may surface during the celebration of the Bicentennial of the Constitution.

James H. Hutson is chief of the manuscripts division of the Library of Congress. He is preparing a supplement to Max Farrand's *The Records of the Federal Convention of 1787* which will be published by Yale University Press in 1987.

5. Nineteenth century reprinting of the Committee of Detail Report. *Peter Force Papers, Library of Congress.*

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V
Teaching Plan for Lesson 5
The Report of the Committee of Detail at the Federal Convention

Objectives

Students are expected to
1) comprehend the origin of the Report of the Committee of Detail;
2) identify main ideas of the Report of the Committee of Detail;
3) compare the Report of the Committee of Detail with the Articles of Confederation;
4) compare the Report of the Committee of Detail with the Constitution of 1787;
5) identify examples of the influence of the report of the Committee of Detail on the Constitution of 1787;
6) interpret, analyze, and evaluate information in a primary source, the Report of the Committee of Detail.

Preparing to Teach the Lesson

Read the essay by James H. Hutson, "Writing the Constitution: The Report of the Committee of Detail, August 6, 1787." Pay special attention to these parts of Hutson's essay: (a) ideas about the committee's approach in writing the Report of the Committee of Detail, (b) excerpts from the Articles of Confederation and the Report of the Committee of Detail, (c) evidence about the continuity between the Articles of Confederation, the Report of the Committee of Detail, and the Constitution of 1787, and (d) claims about the importance of the Report of the Committee of Detail in writing the Constitution of 1787.

Read Lesson 5, "The Report of the Committee of Detail." Pay special attention to the abridged and edited version of the Report of the Committee of Detail, which is the focal point of the Lesson.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Write on the chalkboard: (1) Federal Convention of 1787 and (2) Report of the Committee of Detail. Ask students if they have ever heard of this Committee at the Federal Convention, and what they know about it. Since most students probably know very little or nothing about the Committee, ask them to speculate about what the purpose of this Committee might have been—based on the name of the Committee. Ask students what the words "report" and "detail" bring to mind.

After a brief speculative discussion, tell students the main point of the Lesson is to examine the purposes and contributions of the Committee of Detail in the Federal Convention of 1787.

Developing the Lesson

Ask students to read the parts of the Lesson on the purpose and content of the Report of the Committee of Detail. Assign the abridged and edited version of the Report of the Committee of Detail and the exercise that follows it. Tell students to prepare answers to items 1–18 of the exercise, which requires them to interpret and make judgments about main points in the Report of the Committee of Detail.

Answers to the exercises are presented below.

1. YES, Preamble
2. YES, Article XXIII
3. YES, Article II
4. NO, Article IV, Sect. 3, Article IV, Sect. 4
5. YES, Article XI, Sect. 3
6. YES, Article IX, Sect. 1
7. NO, Article IX, Sect. 1
8. YES, Articles XXIII, X, Sect. 1
9. YES, Articles, IV, Sect. 2; V, Sect. 3
10. YES, Articles VII, Sect. 2; XV
11. NO, Article VII, Sect. 1
12. NO, Article V, Sect. 1
13. NO, Article VI, Sect. 4
14. YES, Article XVIII
15. YES, Article XIX
16. NO, Article XXI
17. YES, Articles XII, VII
18. YES, Article VI, Sect. 5

Before assigning the remainder of the Lesson, draw a "bridge" on the board. At one end of the bridge, write Articles of Confederation. At the other end of the bridge, write Constitution of 1787. Inform students that at the Federal Convention the Report of the Committee of Detail served as a bridge or connection between the Articles of Confederation and the Constitution. The Report of the Committee of Detail provided continuity for many delegates between the Articles of Confederation and the Constitution of 1787. Encourage students to look for examples in the remainder of the Lesson that illustrate that the Report of the Committee of Detail served as a "bridge." Assign the sections on the importance and new ideas of the Report of the Committee of Detail.

Answers to the exercise are presented below.

1.
2. X
3. X
4.
5. X
6. X
7. X

Concluding the Lesson

Conduct a concluding class discussion about the importance of the Report of the Committee of Detail as the first real draft of the Constitution. Make the point that the Committee of Detail did more than copy the resolutions delegates made at the Convention. Emphasize that the Report of the Committee of Detail not only provided a connec-

tion or continuity between the Articles of Confederation and the Constitution of 1787 but added new and innovative ideas as well.

In regard to the questions regarding the ideas of the Committee of Detail, require students to explain and justify their answers with references to the contents of the Report of the Committee of Detail and the Constitution of 1787. Also, require students to explain and justify what they consider to be the most important contribution(s) of the Report of the Committee of Detail. Students should understand that many phrases and powers written in the final version of the Constitution were the result of the work of the members of the Committee of Detail.

V
Lesson 5
The Report of the Committee of Detail at the Federal Convention

From May 25 through mid-July, 1787, delegates in the Federal Convention had been working diligently in the sweltering, Philadelphia summer heat. Two months had passed, and the delegates had heard the proposals of James Madison (Virginia Plan), William Paterson (New Jersey Plan), and Charles Pinckney, and had agreed to the Great Compromise. By late July the delegates were ready to take a break and pull together all the work they had accomplished since the opening of the Convention.

To complete this task, the delegates appointed five of their members to a Committee of Detail: Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, James Wilson of Pennsylvania, John Rutledge of South Carolina, and Edmund Randolph of Virginia.

The purpose of the Committee of Detail was to organize several resolutions that had been brought before the Federal Convention and to express the proceedings and resolutions in legal language. The five members of the Committee of Detail represented different geographic regions of the United States. Moreover, all five members of the committee were experienced in legal matters. Nathaniel Gorham, Oliver Ellsworth, and John Rutledge had served as judges. Edmund Randolph was an experienced political leader, and James Wilson was considered one of the best legal thinkers in the nation.

The Committee of Detail was given ten days to complete its task. On July 26 the Convention adjourned and instructed the Committee to present its report to the Convention on August 6. The delegates also urged the Committee members to consider the question of property and citizenship qualifications for members of the executive, legislative, and judicial branches.

Content of the Report of the Committee of Detail

The Report of the Committee of Detail contained a preamble and twenty-three articles. The actual printed report covered seven pages and included a wide margin on the left so delegates to the Convention could make notes.

Of the twenty-three articles, two served as an introduction. Seven articles applied to the Congress and its makeup and powers. One article dealt with the executive and one with the judiciary branches. Two articles provided for prohibitions upon the states; three articles acknowledged interstate privileges. The last seven articles specified conditions for a variety of topics such as the admission of new states, the guarantee of a republican government, mention of an amendment process, an oath to support the Constitution, ratification, and setting up the new government.

Thus, the Report of the Committee of Detail was outlined as follows.

Preamble	
Articles I and II	Introduction
Articles III through IX	Legislature
Article X	Executive
Article XI	Judiciary
Articles XII and XIII	State Prohibitions
Articles XIV through XVI	Interstate Privileges
Articles XVII through XXIII	Miscellaneous

Study the abridged and edited version of the Report of the Committee of Detail (presented below). Identify main ideas of the report.

Monday, August 6th, In Convention

We the people of the States of New Hampshire, Massachusetts, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the Government of Ourselves and our Posterity.

Article I

The stile [name] of the Government shall be, "The United States of America."

Article II

The Government shall consist of supreme legislative, executive, and judicial powers.

Article III

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative [veto] on the other. . . .

Article IV

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall . . . consist of sixty five members of whom three shall be chosen in New-Hampshire, eight in Massachusetts, one in Rhode-Island and Providence Plantations, five in Connecticut, six in New-York, four in New-Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North-Carolina, five in South-Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from

time to time . . . the Legislature shall . . . regulate the number of representatives by the number of inhabitants . . . at the rate of one for every forty thousand.

Article V

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several states. Each Legislature shall chuse two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years; but immediately after the first election they shall be divided, by lot, into three classes . . . so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Article VI

Sect. 4. Each House shall be the judge of the elections, returns and qualifications of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be . . . questioned . . . and the members of each House shall . . . be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Article VII

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several states;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish Post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the Unites States, and of offenses against the law of nations;

To subdue a rebellion in any State, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof.

Sect. 2. Treason against the United States shall consist only in levying war against the United States . . . and in adhering to the enemies of the United States . . . The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. . . .

Article VIII

The Acts of the Legislature of the United States . . . shall be the supreme law of the several States, and of their citizens and inhabitants. . . .

Article IX

Sect. 1. The Senate of the United States shall have the power to make treaties, and to appoint Ambassadors, and Judges of the Supreme Court. . . .

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for decided controversies between different states.

Article X

Sect. 1. The Executive Power of the United States shall be vested in a single person. His stile shall be "The President of the United States of America;" and his title shall be, "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union. . . . He shall receive Ambassadors, and may correspond with the power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of [stopping] an impeachment. He shall be commander in chief of the Army and Navy of the United States, and of the Militia of the several States. . . . He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. . . .

Article XI

Sect. 1. The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the Inferior Courts, shall hold their offices during good behavior. . . .

Sect. 3. The Jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States . . . to the trial of impeachments of officers of the United States. . . . In cases of impeachment . . . this jurisdiction shall be original. In all other cases . . . it shall be appellate, with such exceptions and under such regulations as the Legislature shall make.

Article XII

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any Treaty, alliance, or confederation; nor grant any title of Nobility.

Article XIII

No State, without the consent of the Legislature of the United States, shall emit bills of credit . . . nor lay imposts or duties on imports. . . .

Article XIV

The Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Article XV

Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

Article XVI

Full faith shall be given in each state to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and magistrates of every other State.

Article XVII

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this Government. . . .

Article XVIII

The United States shall guaranty to each State a Republican form of Government. . . .

Article XIX

On the application of the Legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States

shall call a Convention for that purpose.

Article XX

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

Article XXI

The ratifications of the Conventions of ___ States shall be sufficient for organizing this Constitution.

Article XXII

This Constitution shall be laid before the United States in Congress assembled, for their approbation [approval]. . . .

Article XXIII

To introduce this government, it is the opinion of this Convention, that . . . the members of the legislature should meet at the time and place . . . and . . . choose the President of the United States, and proceed to execute this Constitution.

What does the main Report of the Committee of Detail say about constitutional government? Read the following statements. Decide whether or not each statement is a correct description or interpretation of ideas in the Report of the Committee of Detail. If the statement is incorrect, answer NO. Identify the number of the article(s) and, in some cases, the section number in the Report of the Committee of Detail that includes evidence to support each answer. Be prepared to explain or justify your answers in terms of the contents of the Report of the Committee of Detail.

1. The Report of the Committee of Detail emphasized that the people were creating the new government.
YES __ NO __
ARTICLE # __ Section # __

2. The legislature would meet at a prescribed time "to introduce this government".
YES __ NO __
ARTICLE # __ Section # __

3. The Report states there would be three branches of government.
YES __ NO __
ARTICLE # __ Section # __

4. The population of each state did not influence the number of representatives in the House of Representatives.
YES __ NO __
ARTICLE # __ Section # __

5. Impeachment trials were to take place in the Supreme Court.
YES __ NO __
ARTICLE # __ Section # __

6. The power to make treaties belonged to the Senate.
YES __ NO __
ARTICLE # __ Section # __

7. The President of the United States has the power to make treaties and appoint ambassadors and Supreme Court judges.
YES __ NO __
ARTICLE # __ Section # __

8. The legislature would select the President.
YES __ NO __
ARTICLE # __ Section # __

9. The Committee of Detail indicated age, citizenship, and residency requirements for members of the legislature.
YES __ NO __
ARTICLE # __ Section # __

10. The Report of the Committee of Detail attempted to define treason and its punishment.
YES __ NO __
ARTICLE # __ Section # __

11. The legislature could not collect taxes.
YES __ NO __
ARTICLE # __ Section # __

12. The Report of the Committee of Detail called for each state to have one vote in the Senate.
YES __ NO __
ARTICLE # __ Section # __

13. Religious qualifications for members of the legislature were clearly indicated.
YES __ NO __
ARTICLE # __ Section # __

14. The government guaranteed a republican form of government.
YES __ NO __
ARTICLE # __ Section # __

15. The Report of the Committee of Detail mentioned an amendment procedure.
YES __ NO __
ARTICLE # __ Section # __

16. The Committee of Detail indicated the exact number of states necessary for ratification of the Constitution.
YES __ NO __
ARTICLE # __ Section # __

17. States were prevented from coining money.
YES __ NO __
ARTICLE # __ Section # __

18. Members of the legislature were given privileges during Congressional sessions.
YES __ NO __
ARTICLE # __ Section # __

Importance of the Committee of Detail Report

Delegates to the Convention believed they had already dealt with the major issues of the new Constitution and that nothing significant was left to be decided. The delegates thought the Committee of Detail would merely smooth over the rough edges created by months of debate. But the delegates were wrong! The Committee of Detail made decisions that were very important—decisions that provided (1) a bridge between the Articles of Confederation and the Constitution and (2) new ideas that became part of the Constitution. The Report of the Committee of Detail became the first real draft of the Constitution.

Many delegates were concerned that the Convention had gone too far in its proposals. The instructions given to the delegates who attended the Federal Convention had been to revise the Articles of Confederation. But Madison's Virginia Plan as well as other plans added to the power of the central government at the expense of state governments. Clearly, the Convention had gone beyond its instructions.

The Report of the Committee of Detail helped to reduce fears of some delegates that the Convention had overstepped its bounds. Members of the Committee of Detail incorporated words and phrases from the Articles of Confederation into their Report. For example, the members of the Committee of Detail deliberately used the word "Article" to organize the first draft of the Constitution. Furthermore, the Committee also used phrases with which delegates were familiar such as "full faith and credit" and "privileges and immunities." These phrases were included in the Report of the Committee of Detail and *became part* of the final version of the Constitution. The decision to use words from the Articles of Confederation erased the fears of many delegates. This decision provided a bridge or link between the Articles of Confederation and the final writing of the Constitution.

The Articles of Confederation and the Report of the Committee of Detail

Read the following excerpts from the Articles of Confederation. Compare each excerpt from the Articles of Confederation to the excerpt indicated in the Report of the Committee of Detail. Place an "X" in the space next to each ACCURATE statement(s).

Articles of Confederation
Article I

The Stile of this confederacy shall be "The United States of America."

Refer to Article I of the Report of the Committee of Detail.

___ 1. The Committee of Detail used the exact sentence as found in the Articles of Confederation.

___ 2. There was only one word changed from the statement in the Articles of Confederation—"confederacy" to "government."

___ 3. The change in the wording was important.

Articles of Confederation
Article IV

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Refer to Article XV of the Report of the Committee of Detail.

___ 4. The Report of the Committee of Detail changed the meaning and intent of the statement in Article IV of the Articles of Confederation.

___ 5. The words used in the Report of the Committee of Detail were similar to the words used in the Articles of Confederation.

Articles of Confederation
Article IV

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Refer to Article XVI of the Report of the Committee of Detail.

___ 6. The members of the Committee of Detail used language very similar to the language used in the Articles of Confederation.

___ 7. The members of the Committee of Detail dealt with the issue of relation of states by borrowing from the Articles of Confederation.

New Ideas from the Committee of Detail Report

Besides serving as a bridge between the Articles of Confederation and the Constitution, the Report of the Committee of Detail provided innovative, new ideas. Members of the Committee used terms such as "president," "senate," "speaker," and "supreme court" in the Report. These terms, as well as phrases such as "We the people" and "state of the union" became part of the Constitution.

The Committee of Detail contributed further to the writing of the Constitution. In mid-July, delegates to the Convention had debated whether or not the legislative branch should have general powers or enumerated (listed) powers. Twice the delegates had voted on giving the legislative branch only general powers—not enumerated powers. But the Committee of Detail decided to ignore the votes of the delegates. Members of the Report of the Committee of Detail decided to write a list of powers to belong to the legislative branch. (Refer to Article VII of the Report of the Committee of Detail.) The Committee also included the significant clause: "... to make all laws that shall be *necessary and proper* for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or officer thereof." The "necessary and proper" clause gave Congress the flexibility to meet the changes in technology and society for future generations.

When the Report was given to the delegates on August 6, 1787, few challenged the decisions of the Committee of Detail. The idea of listing powers was accepted, as was the "necessary and proper" clause. The Committee had added details to general resolutions of the Convention. As the Committee did this, it defined the powers of the new government. Thus, the Committee of Detail had increased the power of the national government. This increase in national power became part of the final copy of the Constitution.

The Report of the Committee of Detail had played an important role in the Convention of 1787. It had served as a bridge between the Articles of Confederation and the Constitution, and had contributed new ideas that were used in the Constitution. Between August 6 and the final day of the signing of the Constitution, September 17, delegates did make changes regarding the presidency, treaties, and the Supreme Court. Members of the Committee of Detail had certainly affected the Convention. Their Report prepared the way for the final version of the Constitution of 1787.

Questions Regarding Ideas of the Committee of Detail

1. How did the Report of the Committee of Detail contribute to the final copy of the Constitution?

2. Refer to a copy of the Constitution of the United States. Compare the enumerated (listed) powers written in the final version of the Constitution (Article I, Section 8, Clauses 1–17) with the enumerated powers in Article VII of the Report of the Committee of Detail. Give examples that illustrate how similar or different the two versions are.

3. Compare Article X of the Report of the Committee of Detail with Article II of the 1787 Constitution. Identify three similarities and three differences in treatment of the executive branch.

4. Of the contributions of the Report of the Committee of Detail toward the writing of the Constitution, which one was the most significant contribution? Be prepared to defend your choice.

PART VI

Introduction

Alexander Hamilton: Federalist

Teaching Plan for Lesson 6

Lesson 6: Alexander Hamilton and *The Federalist*

VI
Introduction

Alexander Hamilton was one of the earliest and strongest critics of the Articles of Confederation. In September of 1780 he wrote these prophetic words: "The fundamental defect is a want of power in Congress.... I shall now propose the remedies.... The first step must be to give Congress powers competent to the public exigencies ... by calling immediately a convention of all the states with full authority to conclude finally upon a general confederation, stating to them beforehand explicitly the evils arising from a want of power in Congress."

Alexander Hamilton acted effectively with like-minded leaders (e.g., Washington, Madison, Jay, and others) to carry out his proposed remedies to the problems of national government under the Articles of Confederation. He was a leader at the Annapolis Convention (September 11–14, 1786), which issued a report calling upon the thirteen American states to send representatives to a Federal Convention for the purpose of revising the Articles of Confederation "to render the Constitution of the federal government adequate to the exigencies of the Union."

Eight months later Hamilton was in Philadelphia to serve as a delegate from New York to the Federal Convention, which he had proposed as the remedy to problems of government in the United States. Although the new frame of government produced by the Convention did not exactly fit his model for constitutional government, Hamilton preferred it to the weak Articles of Confederation, and decided to support the 1787 Constitution. His support was critically important to the ultimate success of those favoring ratification of this Constitution.

After ratification of the 1787 Constitution, Alexander Hamilton worked mightily to make it work. He served President George Washington not only as the first Secretary of the Treasury, but as the President's most trusted and able advisor in establishment of an effective and respected federal government. At the end of Hamilton's service to the federal government, President Washington wrote to him: "In every relation which you have borne to me, I have found that my confidence in your talents, exertions, and integrity has been well placed." High praise, indeed, from a leader who was cautious and sparse in his bestowal of accolades.

If supporters of the 1787 Constitution had lost the contest for ratification, Alexander Hamilton would have also lost his opportunity to contribute to the establishment of an enduring federal government for the United States. Hamilton's most notable contribution to the ratification debate was his conception and primary authorship of *The Federalist*, a collection of 85 papers that argued persuasively for replacement of the Articles of Confederation by the 1787 Constitution. Jacob E. Cooke, an expert on the constitutional thought of Alexander Hamilton, wrote, "*The Federalist* is deservedly acclaimed as a classic of American political literature.... [It] is an enduringly definitive commentary on the Constitution" (*Alexander Hamilton: A Biography*, 1982, 54–55).

Part VI includes an essay by Jacob E. Cooke, "Alexander Hamilton: Federalist." Cooke discusses Hamilton's contributions to the framing and ratification of the Constitution of the United States. Professor Cooke emphasizes Hamilton's early recognition of flaws in the Articles of Confederation and his contributions to bringing about the Federal Convention of 1787. Cooke also treats in detail Alexander Hamilton's brilliant defense of the 1787 Constitution in *The Federalist* papers and at the New York Ratifying Convention.

The essay by Cooke is followed by a Teaching Plan and a Lesson for high school students: "Alexander Hamilton and *The Federalist*." The Teaching Plan and Lesson provide materials for high school history and government courses on core ideas and documents in the civic heritage of the United States.

DOCUMENTS

Alexander Hamilton: Federalist

by JACOB E. COOKE

As the early American nation struggled to conduct its business under the Articles of Confederation, Alexander Hamilton emerged as one of the most vocal advocates of a stronger central government—so much so that some of his more extremist contemporary opponents believed that he secretly favored the establishment of a monarchy in America. But Hamilton was no closet monarchist. His enthusiasm for effective and efficient government may have led him to support some measures that alarmed others, but his belief in republican institutions was firm and consistent. More to the point, his diligent labors on behalf of the ratification of the new constitution written in Philadelphia in 1787 played a crucial role in its adoption.

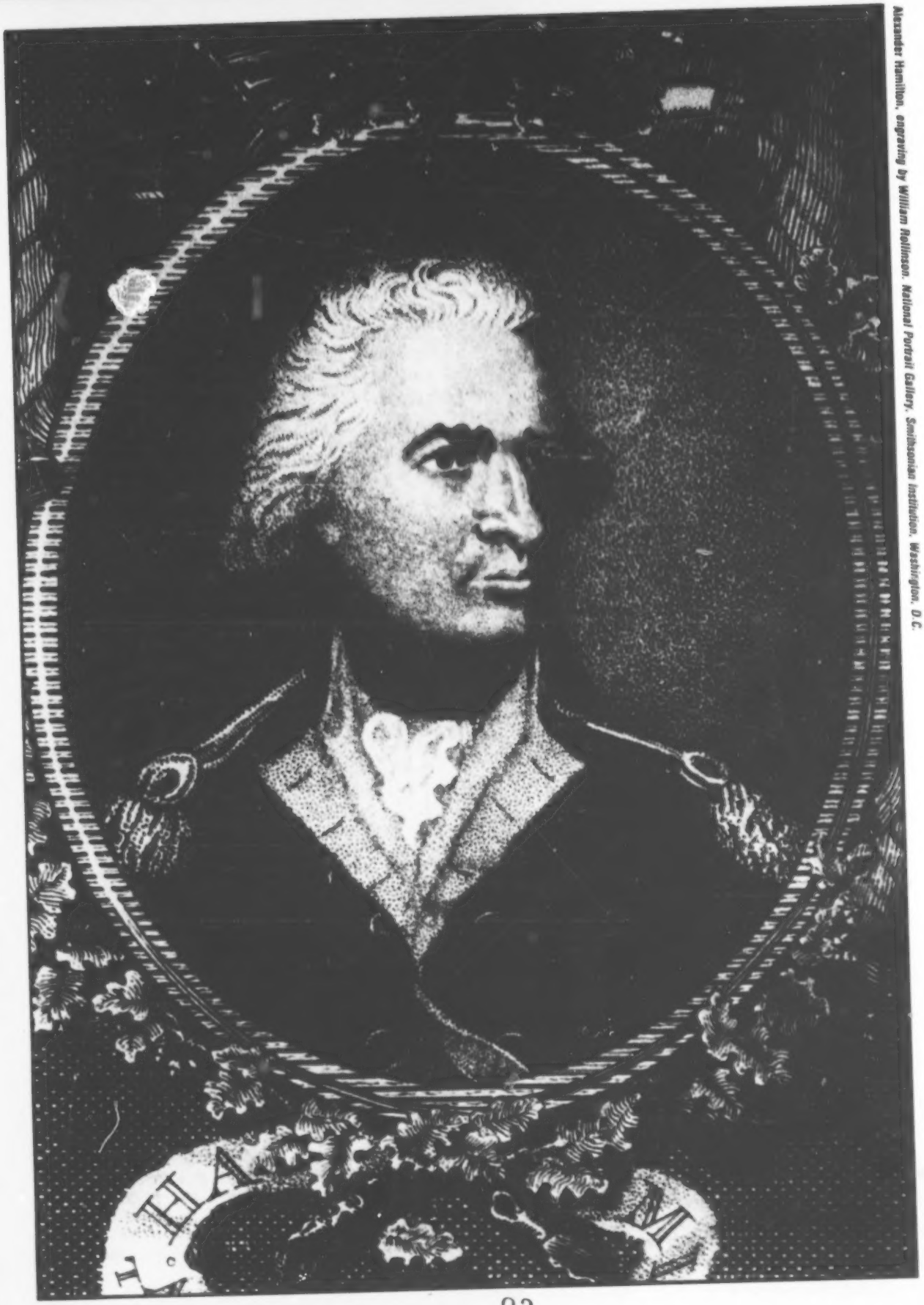
Hamilton's support of an effective, viable, central government began more than a decade before the Philadelphia Convention hammered out a constitution under which his goal could be achieved. His ideas were forged in the crucible of the American Revolution. The nationalism that he consistently championed is explained by his comparative freedom from parochial or local ties.

Born on the West Indian island of Nevis in 1755, Hamilton was the illegitimate child of Rachael Fawcett Lavien and James Hamilton. As a young man he moved with his parents to St. Croix where at the age of thirteen he was taken on as a clerk by the partnership of Beekman and Cruger, transplanted New Yorkers whose Christiansted-based firm carried on an extensive international trade. Hamilton quickly demonstrated such extraordinary ability—he was manifestly what we would now call a child prodigy—that Nicholas Cruger decided to provide his talented clerk an opportunity to receive a gentleman's education on the North American mainland. Arriving in 1772, Hamilton first attended a school in Elizabethtown (now Elizabeth, N.J.) and a year later, thanks to his remarkable precocity, enrolled in King's College (now Columbia University) where he began his studies in 1773-74.

Hamilton's decision to defend his adopted country in its dispute with Great Britain cut short his formal education. In March 1776 the New York legislature (bowing to the wishes of influential friends of the young West Indian) appointed him captain of a company of artillery, to be raised for the defense of the province. A year later, the single most important opportunity of his life presented itself when George Washington, the commanding general of the Continental army, chose him to be his aide-de-camp.

From the vantage point of Washington's headquarters, Hamilton could view the American war effort as a whole. He thus saw not only the deficiencies of the Continental army but also the weaknesses of the Continental Congress, principally its lack of powers to support its own army adequately and to invigorate the Union for which it fought. In 1780-1781 Hamilton wrote a number of letters that set forth his views on public policy during the Revolution, including most notably a sharp indictment of the weak Confederation government and the necessity of constitutional reform. They also prefigured his advocacy of an efficient, effective, and, above all, more powerful government during the debate at the constitutional and ratifying conventions and the interpretation of the new constitution that would inform his famous state papers as the secretary of the Treasury. The following excerpts are from a letter that Hamilton wrote to James Duane on September 3, 1780:

> *. . . I sit down to give you my ideas of the defects of our present system, and the changes necessary to save us from ruin. . . . The fundamental defect is a want of power in Congress. It is hardly worth while to show in what this consists, as it seems to be universally acknowledged, or to point out how it has happened, as the only question is how to remedy it. It may however be said that it has originated from three causes—an excess of the spirit of liberty which has made the particular states show a jealousy of all power not in their own hands; . . . a diffidence in Congress of their own powers, by which they have been timid and indecisive in their resolutions, constantly making concessions to the states, till they have scarcely left themselves the shadow of power; [and] a want of sufficient means at their disposal to answer the public exigencies and of vigor to draw forth those means; . . . .*
>
> *I shall now propose the remedies, which appear to me applicable to our circumstances, and necessary to extricate our affairs from their present deplorable situation.*
>
> *The first step must be to give Congress*



Alexander Hamilton, engraving by William Rollinson. National Portrait Gallery, Smithsonian Institution, Washington, D.C.

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powers competent to the public exigencies . . . by calling immediately a convention of all the states with full authority to conclude finally upon a general confederation, stating to them beforehand explicitly the evils arising from a want of power in Congress, and the impossibility of supporting the contest on its present footing. . . .

The confederation in my opinion should give Congress complete sovereignty; except as to that part of internal police, which relates to the rights of property and life among individuals and to raising money by internal taxes. It is necessary, that every thing, belonging to this, should be regulated by the state legislatures. [In virtually all else] Congress should have complete sovereignty. . . .

***Papers of Alexander Hamilton*, II, 400-401, 406-408**

The ideas that he expressed in his private letter in September 1780 remained the pillars of Hamilton's political thought throughout the Confederation era. He expressed them publicly in a series of six newspaper articles that appeared intermittently from July 12, 1781 to July 4, 1782. In these essays, entitled "The Continentalist," Hamilton once again concentrated on the perils and pitfalls of government under a constitution as feeble and frail as the Articles of Confederation and the advantages to be derived from investing Congress with all the powers requisite to viable nationhood. The notion that he sought to controvert was the people's commitment to state sovereignty; the popular anxiety that he sought to allay was the threat posed to liberty by a powerful Union; the "noble and magnificent" vision that he shared was that of a "great Federal Republic."

No. I, July 12, 1781

. . . An extreme jealousy of power is the attendant on all popular revolutions, and has seldom been without its evils. It is to this source we are to trace many of the fatal mistakes, which have so deeply endangered the common cause; particularly that defect, which will be the object of these remarks, A WANT OF POWER IN CONGRESS. . . . In a government framed for durable liberty, not less regard must be paid to giving the magistrate a proper degree of authority, to make and execute the laws with rigour, than to guarding against encroachments upon the rights of the community. As too much power leads to despotism, too little leads to anarchy, and both eventually to the ruin of the people. These are maxims well known, but never sufficiently attended to, in adjusting the frames of governments. . . .

No. VI, July 4, 1782

There is something noble and magnificent in the perspective of a great Federal Republic, closely linked in the pursuit of a common interest, tranquil and prosperous at home, respectable abroad; but there is something proportionably diminutive and contemptible in the prospect of a number of petty states, with the appearance only of union, jarring, jealous and perverse, without any determined direction, fluctuating and unhappy at home, weak and insignificant by their dissentions, in the eyes of other nations.

***Papers of Alexander Hamilton*, II, 650-651; III, 106**

Events of the early 1780s seemed to bear out Hamilton's fears of sovereign states—"petty," "jarring," and "jealous"—but he refused to relinquish altogether his vision of "a great Federal Republic." It was no doubt for this reason that Hamilton agreed to serve as one of New York's delegates to the Continental Congress. For eight frustrating months (November 1782-July 1783), he valiantly but unsuccessfully attempted to secure adequate and permanent funds for the tottering Confederation government. Although he may have derived some solace from his emergence as an important public figure, both in New York and in national politics, Hamilton was disheartened by what he viewed as the shortsightedness of a majority of his countrymen and dismayed by the immediate future of his adopted country. In a letter of July 25, 1783, he shared his pessimism with his long-time friend John Jay:

We have now happily concluded the great work of independence, but much remains to be done to reach the fruits of it. Our prospects are not flattering. Every day proves the inefficacy of the present confederation, yet the common danger be-

Mann's Tavern, site of the Annapolis Convention, 1786. Courtesy of the Warren Collection, Maryland State Archives.

ing removed, we are receding instead of advancing in a disposition to amend its defects. The road to popularity in each state is to inspire jealousies of the power of Congress, though nothing can be more apparent than that they have no power; and that for the want of it, the resources of the country during the war could not be drawn out, and we at this moment experience all the mischiefs of a bankrupt and ruined credit. It is to be hoped that when prejudice and folly have run themselves out of breath we may return to reason and correct our errors.

Papers of Alexander Hamilton, III, 416-417

While awaiting such a revival and correction, Hamilton over the next few years focused his energy and attention on assuring the success of his law practice and thus the economic security of his growing family. But public affairs continued to be an overarching concern and he remained convinced that "the principal defects of the confederation," as he would reaffirm in *The Federalist*, "do not proceed from minute or partial imperfections, but from the fundamental errors in the structure of the building." In his view these "cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric." An opportunity to initiate the requisite job of reconstruction was occasioned by the well-known Annapolis Convention.

The initiative for calling this Convention was taken by the Virginia legislature, which appointed commissioners to join delegates from other states at Annapolis, Maryland, in September 1786 "for the purpose of forming such regulations of trade as may be judged necessary to promote the general interest." Although such remedial treatment was mild as compared to the drastic surgery that Hamilton believed to be necessary, he nevertheless accepted appointment as a member of the delegation from New York, hoping no doubt that an examination of the Articles might reveal their malignancy. Any hope at all soon appeared misguided as state after state displayed little interest. When the convention assembled in the Maryland capital only twelve delegates representing merely five states were present. That such an assembly might prove to be a giant and perhaps decisive step on the road to yet another convention empowered to establish an entirely new government would have appeared to require nothing less than a miracle.

But so it was. Once the convention was organized, its members "entered into a full communication of Sentiments & deliberate consideration of what would be proper to be done." They swiftly

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decided that while it would be improper to propose measures for a uniform commercial system—the purpose of the assembly—it would be appropriate to submit a general report to the several states. Drafted by Hamilton and adopted on September 14, the Address of the Annapolis Convention was not itself responsible for, but it did make possible, what has been described as the "Miracle at Philadelphia," the Constitutional Convention of 1787.

> *That there are important defects in the system of the Federal Government is acknowledged by the Acts of all those States, which have concurred in the present Meeting; [as is the fact] That the defects . . . merit a deliberate and candid discussion, in some mode, which will unite the Sentiments and Councils of all the States. . . .*
>
> *Your Commissioners, with the most respectful deference, beg leave to suggest . . . [that] the States . . . would themselves concur, and use their endeavours to procure the concurrence of the other States, in the appointment of Commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union. . . .*
>
> **Papers of Alexander Hamilton, III, 688-689**

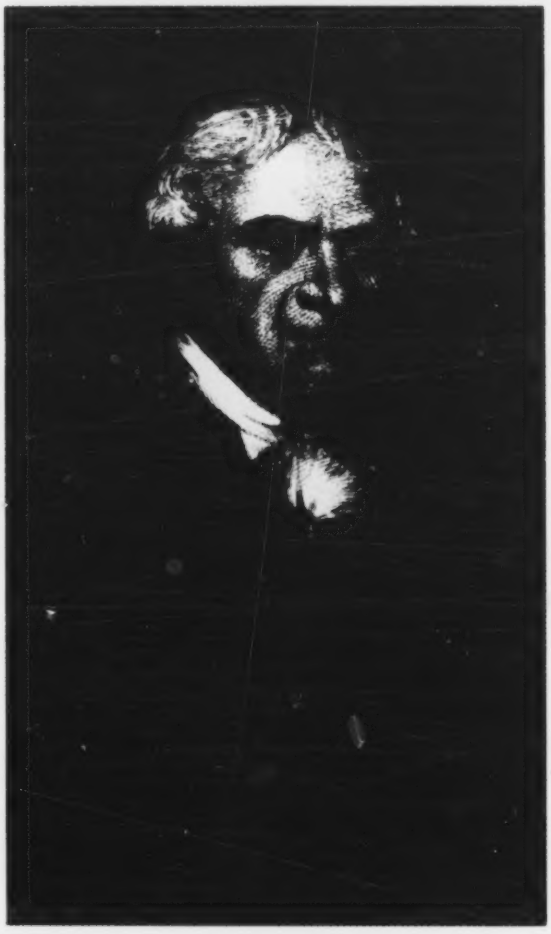
George Clinton, New York's popular and perennial governor, talking about the Annapolis Address, remarked that "no such reform . . . was necessary; that the Confederation as it stood was equal to the purposes of the Union." Since most of his supporters in the New York legislature, a majority of that body's membership, agreed with him, one wonders why the New York Assembly bothered to send a delegation to the Philadelphia convention, much less to include in it Alexander Hamilton, the state's most articulate proponent of a powerful, genuinely sovereign national government. Whatever the reasons for Hamilton's selection, the Clintonians sought to checkmate any influence that he might exert by selecting as his fellow delegates two stalwart states-righters, Robert Yates and John Lansing, Jr. Thus effectively disenfranchised, Hamilton might reasonably have turned down the appointment. That he did not was probably due to his immodest belief that his persuasive oratory might influence decisions that his votes could not. Eloquent he indisputably was; whether persuasively so is another matter. The most important speech that he delivered at the Constitutional Convention did him more posthumous damage than anything else he ever said or wrote.

Hamilton took his seat in the Convention on May 18 and then remained virtually silent for almost a month. Perhaps exasperated that the Convention was not going fast enough and far enough toward embracing the kind of government that he envisaged, he finally decided to give the delegates a shove in the right direction by a proposal so far-fetched, so impossible of adoption by the American people, that any other plan considered by the Convention would seem moderate by contrast. On June 18 he took up most of an unusually hot day describing the ideal government toward which he believed that the Convention should aim: one branch elected for a short term, one branch to serve for life and an executive elected for life. James Madison recorded Hamilton's speech as follows:

> *Mr. Hamilton, had been hitherto silent on the business before the Convention. . . . The crisis however which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety & happiness.*
>
> *He would first make a comparative examination of the two plans [already before the Convention]—prove that there were essential defects in both—and point out such changes as might render a national one, efficacious. . . . [The vast extent of the territory of the U.S.] almost led him to despair that a Republican Govt. could be established. . . . He was sensible at the same time that it would be unwise to propose one of any other form. In his private opinion he had no scruple in declaring, supported as he was by the opinions of so many of the wise & good, that the British Govt. was the best in the world: and that he doubted much whether any thing short of it would do in America. . . . In every community where indus-*

try is encouraged, there will be a division of it into the few & the many. Hence separate interests will arise. There will be debtors & creditors &c. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both therefore ought to have power, that each may defend itself agst. the othr. . . . What is the inference from all these observations? That we ought to go as far in order to attain stability and permanency, as republican principles will admit. [Let the lower house of the legislature be elected by the people to serve for a comparatively short term.] Let one branch of the Legislature hold their places for life or at least during good behaviour. Let the Executive also be for life. . . . But is this a Republican Govt., it will be asked? Yes if all the Magistrates are appointed, and vacancies are filled, by the people, or a process of election originating with the people. . . .

James Madison, "Notes on the Debates in the Federal Convention," Papers of Alexander Hamilton, IV, 187, 188, 192, 193, 194.



George Clinton, *engraving by P. Maverick. Library of Congress.*

Although Hamilton's speech was posthumously so interpreted as to make him the proponent of monarchy or aristocracy, it was not a final statement of his political philosophy. He would come to realize, as he argued only a few months later in *The Federalist*, that indivisible sovereignty was not indispensible to a vigorous and effective national government, that federalism could be tailored to the exigencies of Union and that republicanism was best suited to the temper and needs of the American people.

Soon after his controversial speech of June 18, Hamilton, who presumably decided that his ability to affect the outcome of the deliberations of the Constitutional Convention was at best marginal, returned to New York. Although he thereafter intermittently resumed his seat at the Convention and occasionally participated in its debates, his role was not a major one. On September 17 he was the sole New York delegate to sign the new frame of government. His reason for doing so was suggested some months later in *The Federalist*. "The truth is," he wrote in a passage that also indicated how far he had travelled since June 18, "that the General GENIUS of a government is all that can be substantially relied upon for permanent effects. Particular provisions, though not altogether useless, have far less virtue and efficacy than are commonly ascribed to them."

The Federalist was Hamilton's most important contribution to the adoption of the new constitution hammered out by what has aptly been called "the Great Convention." Of the bulky literature occasioned by the debate over ratification, it was also the most enduringly important. Having decided to publish a series of essays defending the proposed constitution, virtually clause-by-clause, Hamilton secured the aid of two brilliant collaborators, John Jay, a fellow New Yorker who had served as Secretary for Foreign Affairs under the Confederation government, and James Madison of Virginia, with whom Hamilton had served in the Continental

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Congress in 1782-1783 and perhaps the most influential member of the Constitutional Convention. Jay wrote only five of the essays; Hamilton and Madison wrote the rest. Addressed to "the people of the state of New York" and written under the pseudonym "Publius," the articles were initially printed in New York City newspapers between October 1787 and August 1788 and published in book form in the latter year.

Hamilton's "Publius" essays are replete with richly textured arguments and illustrations and comprehensive explications of the Constitution. The following passages illustrate some of his major ideas.

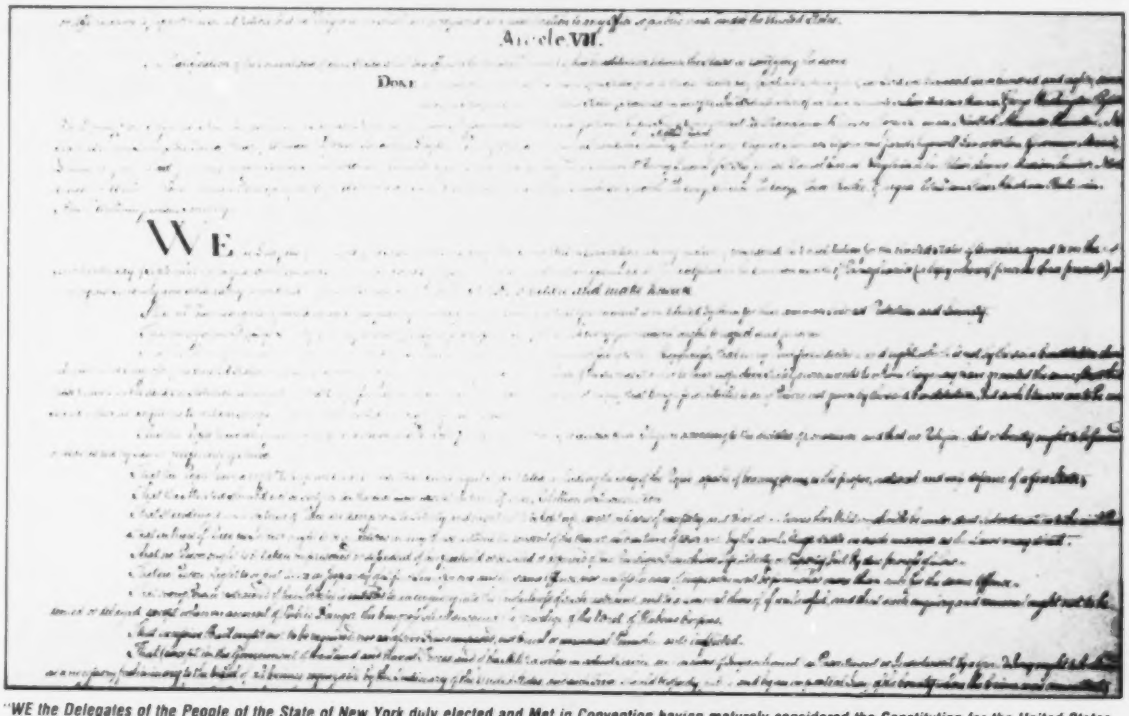
The principal theme of *The Federalist* was the manifest inability of the Confederation government to deal with the pressing problems of the new nation.

. . . There are material imperfections in our national system, and . . . something is necessary to be done to rescue us from impending anarchy. The facts that support this opinion are no longer objects of speculation. . . .

We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarcely any thing that can wound the pride, or degrade the character of an independent nation, which we do not experience. . . . To shorten an enumeration of particulars which can afford neither pleasure nor instruction it may in general be demanded, what indication is there of national disorder, poverty and insignificance that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

The Federalist, No. 15

How did the revamped Federal system proposed by the Constitutional Convention remedy the major defect of the Articles of Confederation: its pow-



"WE the Delegates of the People of the State of New York duly elected and Met in Convention having maturely considered the Constitution for the United States of America . . . and having also seriously and deliberately considered the present situation of the United States, Do declare and make known . . . ." beginning of New York State's document of ratification, July 26, 1788. National Archives.

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erlessness to enforce compliance with the laws of the Union? Hamilton's answer—the operation of the laws of the national government directly upon the individual citizens of the country—was the Constitution's most important contribution to the theory and practice of federalism.

> *It seems to require no pains to prove that the States ought not to prefer a national constitution, which could only be kept in motion by the instrumentality of a large army, continually on foot to execute the ordinary requisitions or decrees of the government. And yet this is the plain alternative involved by those who wish to deny it the power of extending its operations to individuals. . . .*
>
> *. . . If it be possible . . . to construct a Federal Government capable of regulating the common concerns and preserving the general tranquility, . . . it must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the Courts of Justice. . . .*
>
> ***The Federalist*, No. 16**

Hamilton's analysis of and prescriptions and predictions for specific provisions of the new charter of government (most notably those dealing with the executive and the Supreme Court) provided what would in time be viewed as a definitive commentary on the Constitution. But his most insistent theme (implicit as often as explicit) and one that he had emphasized for a decade was suggested by the word he used as a synonym for effective government: that word was "energy" (sometimes used interchangeably with "vigor").

> *. . . An enlightened zeal for the energy and efficiency of government will be stigmatized, as the off-spring of a temper fond of despotic power and hostile to the principles of liberty. . . . It will be forgotten, on the one hand, that jealousy is the usual concomitant of violent love, and that the noble enthusiasm of liberty is too apt to be infected with a spirit of narrow and illiberal distrust. On the other hand, it will be equally forgotten, that the vigour of government is essential to the security of liberty. . . .*
>
> ***The Federalist*, No. 1**
>
> *It was a thing hardly to be expected, that in a popular revolution the minds of men should stop at that happy mean, which marks the salutary boundary between POWER and PRIVILEGE, and combines the energy of government with the security of private rights. . . . The citizens of America have too much discernment to be argued into anarchy. And I am much mistaken if experience has not wrought a deep and solemn conviction in the public mind, that greater energy of government is essential to the welfare and prosperity of the community. . . .*
>
> ***The Federalist*, No. 26**

Precisely because it was in large measure a disquisition on political philosophy, *The Federalist* presumably had little effect on the great majority of delegates to the state ratifying conventions, including the one that convened in Poughkeepsie, New York on June 17, 1788. With the approval of New Hampshire some four days earlier, the requisite nine states had ratified the proposed constitution. It was now officially adopted. But the successful establishment of a new government was still problematic: it depended on ratification by New York and Virginia where opponents to the Constitution appeared to be in a majority and invincible. This was particularly true of New York where in the vote for delegates to the state convention the Antifederalists won all but four of the state's counties. Hamilton, who had been elected a delegate from New York City, was among the Federalist leaders who sought to reverse this anti-unionist sentiment.

One all-important consideration, implicit from the outset of the convention proceedings, provided a glimmer of hope: Despite the Clintonians' distrust of a strong union, they were understandably troubled by the consequences of New York's self-imposed isolation from its sister states. Uncertain that such anxiety might in the end oblige the Clintonians to approve the Constitution, Hamilton chose to rely instead on the efficacy of his own eloquence. In speech after speech he tried to allay

Antifederalist fears of the national government's usurpation of power under the Constitution which he depicted as the only alternative to chaotic disunion and perhaps anarchy. Hamilton's performance at Poughkeepsie was impressive, particularly his persuasive refutation of his antagonist's arguments. To counter the Clintonians' insistence on the anti-democratic nature and centralizing drift of the new Constitution, Hamilton, for example, pointed to the "truly republican principles of the Constitution."

. . . We have been told, that the spirit of patriotism and love of liberty are almost extinguished among the people; and that it has become a prevailing doctrine, that republican principles ought to be hooted out of the world. Sir, I am confident that such remarks as these are rather occasioned by the heat of argument, than by a cool conviction of their truth and justice. . . . I [have not] discovered any diminution of regard for those rights and lib-

the Hamilton, float in New York City's ratification parade; from Martha Lamb, History of New York City. *Courtesy of The New-York Historical Society, New York City.*

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erties, in defence of which, the people have fought and suffered. . . . the principles of republicanism are founded on too firm a basis to be shaken. . . . I am flattered with a hope, Sir, that we have now found a cure for the evils under which we have so long labored. I trust, that the proposed Constitution affords a genuine specimen of representative and republican government—and that it will answer, in an eminent degree, all the beneficial purposes of society.

Papers of Alexander Hamilton, V, 44-45

But in view of the Antifederalists' focus on state sovereignty as the essential bulwark of political freedom, Hamilton's major purpose was to refute the argument that a viable central government would diminish or perhaps demolish state power and at the same time to insist on the supremacy of Federal authority should there be a conflict of interest or laws.

The state governments possess inherent advantages, which will ever give them an influence and ascendency over the national government; and will forever preclude the possibility of federal encroachments. That their liberties indeed can be subverted by the federal head, is repugnant to every rule of political calculation. Is not this arrangement then, Sir, a most wise and prudent one? . . .

Gentlemen, in their reasoning, have placed the interests of the several states, and those of the United States in contrast. This is not a fair view of the subject. They must necessarily be involved in each other. . . . The local interests of a state ought in every case to give way to the interests of the Union: For when a sacrifice of one or the other is necessary, the former becomes only an apparent, partial interest, and should yield, on the principle that the small good ought never to oppose the great one. . . . There must be a perpetual accommodation and sacrifice of local advantage to general expediency. . . .

[Nevertheless] Gentlemen indulge too many unreasonable apprehensions of danger to the state governments. . . . The state governments are essentially necessary to the form and spirit of the general system. . . .

Papers of Alexander Hamilton, V, 26, 70

The debates in the New York Convention droned on day after day, even after news was received that Virginia had become the tenth state to ratify the Constitution. Nevertheless, the play being staged at Poughkeepsie was inexorably reaching a denouement that the most stalwart Antifederalists, even as they continued to act their self-assigned roles, must have dimly perceived. Finally, on July 26 the Convention, which at the outset had counted a majority of two to one against adoption, unconditionally ratified the new Constitution by a vote of thirty to twenty-seven. What was responsible? The most satisfactory answer was offered by Antifederalist leader Melancton Smith who explained that the frightening alternative to ratification would have been "convulsions" in the Southern section of the state, "faction and discord" in the rest.

Even before their state's ratification, the citizens of New York City had begun preparations for an elaborate parade to celebrate the formation of a new national government. It was held on July 23, three days preceding ratification by the Poughkeepsie convention. Although that expected event could, as has been indicated, be attributed to any number of abstract causes, to New York City Federalists it was due to one person: Alexander Hamilton. Thus it was that the grandest float in the City's victory march was an impressive replica of a sea-going vessel manned by thirty seamen, drawn by ten horses and named in honor of the man whose figure was carved on its prow: the *Hamilton*.

Sources:

Harold C. Syrett, *et al.*, eds., *Papers of Alexander Hamilton*, 26 vols. (1961-1978).

Jacob E. Cooke, ed., *The Federalist* (1961).

Jacob E. Cooke is John Henry MacCracken Professor of History at Lafayette College. He was associate editor of the initial fifteen volumes of *The Papers of Alexander Hamilton* (Columbia University Press, 1961-1969) and is the author of *Alexander Hamilton*, a biography published by Charles Scribner's Sons in 1982.

VI
Teaching Plan for Lesson 6
Alexander Hamilton and *The Federalist*

Objectives

Students are expected to

1) know the part played by Alexander Hamilton in conception and authorship of *The Federalist*;

2) know the purposes of Hamilton and his colleagues in writing *The Federalist*;

3) comprehend Hamilton's critique of government under the Articles of Confederation;

4) interpret and appraise Hamilton's ideas on constitutional government in *The Federalist* Nos. 1, 23, and 70;

5) know and appreciate the enduring worth of *The Federalist* as a classic work in the civic heritage of the United States.

Preparing to Teach the Lesson

Read the essay by Jacob E. Cooke, "Alexander Hamilton: Federalist." Give special attention to these parts of Cooke's essay: (a) Hamilton's critique of the Articles of Confederation, (b) Hamilton's ideas in selected papers of *The Federalist*, and (c) Hamilton's participation in the New York Ratifying Convention.

Read the Lesson on "Alexander Hamilton and *The Federalist*." Pay special attention to the abridged and edited versions of three *Federalist* papers: Numbers 1, 23, and 70, in which Hamilton argues for a stronger and more effective federal government.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Write the name of Alexander Hamilton on the chalkboard. Ask students what they know about Hamilton's contributions to the writing and ratifying of the Constitution of the United States. During this opening discussion, establish these facts about Hamilton and the 1787 Constitution:

- He was an early critic of the Articles of Confederation, which contributed to public dissatisfaction with this frame of government.
- He was a leading participant in the 1786 Annapolis Convention, which successfully petitioned Congress for a Federal Convention in Philadelphia to improve the government of the United States.
- He served in the Federal Convention as a delegate from New York and signed the 1787 Constitution at the end of the Convention.
- He was a leading supporter of the 1787 Constitution during the campaign to ratify this document.
- He was the conceiver and major author of *The Federalist*.

Ask students what they know about *The Federalist* and its importance during the ratification contest and afterward. After a brief discussion, inform students that the remainder of this Lesson treats Hamilton's ideas on constitutional government as expressed in three *Federalist* papers.

Developing the Lesson

Require students to read the introductory pages of the Lesson and the subsequent section about purposes of *The Federalist*. Then have students discuss answers to the questions following the excerpt from *Federalist* paper No. 1.

Next have students read the sections on Hamilton's critique of the Articles of Confederation and on his remedies for the weaknesses of government under the Articles. Have them examine the excerpts from *The Federalist* Nos. 23 and 70 and answer the questions that follow the documents. Conduct a discussion about these questions and require students to ground their comments with evidence from the two documents.

Concluding the Lesson

Ask students to read the last section of the Lesson on the significance of *The Federalist* papers. Assign the questions at the end of the Lesson. Conduct a brief recitation on the first set of factual review questions. Then conduct a discussion on the final two questions. Students should be required to support or justify answers with evidence from the relevant documents.

VI
Lesson 6
Alexander Hamilton and *The Federalist*

In late September 1787, newspapers throughout the United States carried news of a hot political issue: Should the people of the thirteen United States of America ratify a new Constitution?

This Constitution, drafted by the Federal Convention in Philadelphia (May 25-September 17, 1787), was proposed as a remedy to problems of government under the Articles of Confederation. If specially convened ratifying conventions in at least nine states were to approve it, this new Constitution would replace the Articles of Confederation as the frame of government for the United States.

Opinion on the 1787 Constitution was sharply divided throughout the United States. Its proponents, who called themselves Federalists, claimed that the new frame of government was necessary to prevent the collapse of the United States. Its opponents, the Anti-Federalists, disagreed and argued that the new Constitution should be rejected.

Anti-Federalists wrote critical articles about the 1787 Constitution in newspapers throughout the United States. Some of the most scathing and well-written Anti-Federalist arguments were printed in the newspapers of New York City. Alexander Hamilton, a New York Federalist, was greatly concerned. He feared that the Anti-Federalists might influence a majority of Americans to reject the 1787 Constitution. So he made plans to fight back with a series of essays to explain the proposed Constitution and win support for its ratification.

Alexander Hamilton influenced John Jay and James Madison to join him as authors of essays that would become *The Federalist* papers. Seventy-seven of these *Federalist* papers were first printed in New York City newspapers between October 27, 1787 and April 2, 1788. Eight more essays were written to complete the collection of 85 *Federalist* papers, which were published in two volumes by McLean and Company of New York City. Hamilton, the originator and major author of *The Federalist* papers, wrote 51 of the 85 essays. Madison wrote 29 essays, and John Jay wrote 5 essays. Each *Federalist* paper was signed with the pseudonym, Publius, after Publius Valerius Publicola, a great defender of the Roman Republic of ancient times.

Purposes of *The Federalist*

In *The Federalist* No. 1, published in the *Independent Journal* of New York City (October 27, 1787), Hamilton discussed the overriding purposes of his side in the debate on the Constitution. Examine the following excerpt from the first *Federalist* paper and answer the questions that follow the document.

The Federalist No. 1

October 27, 1787
To the People of the State
of New York:

AFTER an unequivocal experience of the inefficacy of the subsisting federal government, you are called upon to deliberate on a new Constitution for the United States of America. The subject speaks of its own importance; comprehending in its consequences nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth in the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind. . . .

. . . An enlightened zeal for the energy [power] and efficiency of government will be stigmatized [by opponents of the 1787 Constitution] as the off-spring of a temper fond of despotic power and hostile to the principles of liberty. . . . [I]t will be . . . forgotten, that the vigor of government is essential to the security of liberty. . . .

I propose, in a series of papers, to discuss the following interesting particulars:—*The utility of the* UNION *to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a Government at least equally energetic with the one proposed* [Constitution of 1787] *to the attainment of this object—The conformity of the proposed Constitution to the true principles of republican government . . . and lastly, The additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property.*

In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance, that may seem to have claim to your attention. . . .

. . . [N]othing can be more evident to those who are able to take an enlarged view of the subject than the alternative of an adoption of the new Constitution or a dismemberment of the Union. . . .

PUBLIUS

Reviewing Ideas in *The Federalist* No. 1

1. According to Hamilton, what crisis did the people of the United States face in 1787?

2. What advice did Hamilton offer to the people about how to respond to the crisis they faced in 1787?

3. Hamilton says, "[T]he vigor of government is necessary to the security of liberty." Explain this statement. Do you agree with it?

4. What are the purposes of the proposed series of *Federalist* papers, which Hamilton announces in paper number 1?

5. Which one of Hamilton's pur-

poses is the most important to him? Explain.

Hamilton's Critique of the Articles of Confederation

Alexander Hamilton argued in *The Federalist* (Nos. 15–17; 21–22) that government under the Articles of Confederation was inadequate. It lacked power to enforce laws, maintain social order, provide protection against foreign enemies, and guarantee the private rights of individuals. According to Hamilton, government under the Articles of Confederation provided neither liberty nor order.

In *The Federalist* No. 15, Hamilton lamented the "insufficiency of the present Confederation to the preservation of the Union." He warned that "something is necessary to be done to rescue us from impending anarchy.... We may indeed with propriety be said to have reached the last stage of national humiliation.... We have neither troops, nor treasure, nor government."

There were no means to coerce individuals to obey laws of the United States government, wrote Hamilton. "It is essential to the ideal of law that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty [for] disobedience, the resolutions or commands which pretend to be laws will ... amount to nothing more than advice or recommendation." But mere recommendations would not suffice. "Because the passions of men will not conform to the dictates of reason and justice without constraint" (*The Federalist* No. 15).

In *The Federalist* Nos. 16–17 and 21–22, Hamilton emphasized the central government's lack of power to collect taxes and to raise military forces for defense of the United States. He complained that the state governments had too much power to block actions of the central government because only they, and not the government of the United States, could deal directly with individuals. "The United States as now composed have no power to exact obedience ... to their resolutions ... by any ... constitutional means. There is no express delegation of authority to them to use force against delinquent members" (No. 21).

The Articles of Confederation provide that "each state shall retain every power, jurisdiction, and right, not expressly delegated to the United States." Powers of government, therefore, were so weighted in favor of the states as to render impotent the government of the United States. Hamilton asked (*The Federalist* No. 22): "Is it possible that the people of America will longer consent to trust their honor, their happiness, their safety, on so precarious a foundation?" He concluded: "The organization of Congress is itself utterly improper for the exercise of those powers which are necessary to be deposited in the Union." Thus Hamilton made his case against intolerable weakness in government under the Articles of Confederation.

Necessary and Proper Power in the Constitutional Government

Alexander Hamilton offered remedies in *The Federalist* (Nos. 23–36 and 70–81) to weaknesses in government under the Articles of Confederation. He emphasized these points:

- Invest the government with every power necessary to carry out duties the people expect of it, such as protection against foreign governments and internal disorder that would threaten the security of individuals in their private rights to life, liberty, and property.
- Grant constitutional powers to the federal government to collect taxes and raise military and police forces so that it has means to carry out its proper duties.
- Diminish powers of state governments by enabling the federal government to deal directly with individuals instead of having to act only through state governments.
- Establish a chief executive who can enforce laws and protect national interests.
- Establish a federal judiciary to interpret the laws and ensure their equitable and effective application throughout the United States.

Examples of Hamilton's arguments for a more effective federal government are presented in *The Federalist* Nos. 23 and 70. Examine the excerpts below from these two documents. Use evidence in the documents to answer questions that follow them.

The Federalist No. 23

December 18, 1787
To the People of the State
of New York:

THE necessity of a Constitution, at least equally energetic [powerful] with the one proposed [the 1787 Constitution], to the preservation of the Union is the point....

The principal purposes to be answered by union are these—the common defense of the members, the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries.

The authorities essential to the common defense are these: to raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation, *because it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them....*

... [T]he Union [United States] ought to be invested with full power to levy troops; to build and equip fleets; and to raise the revenues [through taxes] which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced by other governments.

... [I]t is both unwise and dangerous to deny the federal government an unconfined authority in respect to all those objects which are entrusted to its management [grants of power enumerated in the 1787 Constitution]. It will indeed deserve the ... vigilant and careful attention of the people to see that it [federal government] be modeled [limited by its structure] in such a manner as to admit of its being safely vested with the requisite powers.... A government, the constitution of which renders it unfit to be trusted with all the powers which a free people *ought to delegate to any government*, would be an unsafe and improper depositary of the NATIONAL INTERESTS. Whenever THESE can with propriety be confided, the co-incident powers may safely accompany them.... The POWERS [1787 Constitution] are not too extensive for

the OBJECTS of federal administration [order and security and liberty for the Union and its people], or in other words, for the management of our NATIONAL INTERESTS. . . .

PUBLIUS

The Federalist No. 70

March 15, 1788
To the People of the State
of New York:

. . . Energy [power] in the executive is a leading character [trait] in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property . . . to the security [protection] of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. . . .

A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. . . .

The ingredients which constitute energy in the executive are unity [one chief executive]; duration [a long enough term of office]; an adequate provision for its support [adequate revenues through taxation]; and competent powers.

The ingredients which constitute safety in the republican sense [sufficient limits on power to guard against tyranny] are a due dependence on the people [through their participation in their own government] and a due responsibility [accountability of the executive to the people and to their representatives in the legislative branch of government]. . . .

PUBLIUS

Reviewing Ideas in *The Federalist* Nos. 23 and 70

1. In several papers of *The Federalist*, Hamilton charged that government under the Articles of Confederation was inadequate. What remedies did he propose for overcoming these inadequacies in *The Federalist* Nos. 23 and 70?

2. According to Hamilton, what should be the purposes of the constitutional government of the United States?

3. Hamilton certainly stressed the need for more power in government to provide order, stability, and security for the nation and its people. He also believed that there should be sufficient limits on the government's powers to prevent tyranny and protect the liberty of individuals. What does Hamilton say in *The Federalist* Nos. 23 and 70 about limitations on the powers of government?

The Significance of Hamilton's Ideas in *The Federalist*

The Federalist was conceived as a work of advocacy, to influence Americans to ratify the 1787 Constitution. This purpose was achieved, but the vote in some cases was very close. In New York, for example, the Constitution was ratified by the narrow margin of 30–27. In North Carolina and Rhode Island, the Constitution was at first voted down and ratified only after the new government of the United States was underway.

How much influence did *The Federalist* have on the votes of delegates in the various state ratifying conventions? It was not much, in most cases. Why? Because few voters who elected delegates to the ratifying conventions had read these papers. And most delegates in the majority of the ratifying conventions had not read even one *Federalist* paper. James Madison, however, circulated *The Federalist* papers among the delegates in the Virginia Ratifying Convention, and Hamilton also made sure that his fellow delegates in the New York Convention had these essays. Ideas in *The Federalist* were used in the Virginia Convention by Madison and in the New York Convention by Hamilton and Jay to justify points made in debates. So, in at least two very important state ratifying conventions, Virginia and New York, *The Federalist* was an important part of the proceedings.

Although *The Federalist* did not fully satisfy the purposes of its authors as a work of advocacy during the ratification contest, it achieved lasting fame as a brilliant work on principles of constitutional government. Several American leaders recognized the importance of *The Federalist* soon after it was published. Thomas Jefferson, for example, wrote to James Madison (November 18, 1788) and lauded it "as the best commentary on the principles of government which ever was written." And George Washington wrote: "When the transient circumstances and fugitive performances which attended this Crisis shall have disappeared, That Work, [*The Federalist*] will merit the Notice of Posterity; because in it are candidly and ably discussed the principles of freedom and the topics of government, which will be always interesting to mankind so long as they shall be connected in Civil Society" (Letter to Alexander Hamilton, August 28, 1788).

The Federalist has met the test of time, as George Washington said it would. From the founding period of United States history until our own period, lawyers, judges, politicians, scholars, and others have consulted *The Federalist* to expand their knowledge and appreciation of constitutional government in the United States.

Alexander Hamilton deserves the largest share of the credit for *The Federalist*, even though some of the most brilliant of these papers were authored by James Madison. Hamilton was the conceiver and major author of this work. He also was the manager and leader who made sure that this project was completed. Finally, Hamilton organized and edited the two-volume first edition of *The Federalist* published in 1788. Since then, many editions of this American classic have been published in many languages. Thus, the constitutional thought of Alexander Hamilton lives on to be examined, admired, and disputed—as Americans and others around the world strive to demonstrate that they "are really capable . . . of establishing [and maintaining] good government from reflection and choice" (*The Federalist* No. 1).

Reviewing Facts and Main Ideas

1. Why were *The Federalist* papers written?

2. What was the role of Alexander Hamilton in the conception and authorship of *The Federalist*?

3. Who were Hamilton's collaborators in the production of *The Federalist*?

4. To what extent were purposes of *The Federalist* achieved?

Interpreting and Judging Ideas in Documents

1. Alexander Hamilton wrote: "It might be said that too little power [in government] is as dangerous as too much, that it leads to anarchy, and from anarchy to despotism. . . . Power must be granted or civil society cannot exist; the possibility of abuse is no argument against the thing." a. Does this statement agree with ideas in *The Federalist* Nos. 1, 23, and 70? Refer to these documents to find evidence to support your answer to this question. b. Do you agree with this statement by Hamilton? Explain.

2. Refer to Articles I, II, III, VI of the Constitution.

   a. Find at least five examples that show how the Constitution provides for "energetic government" as called for by Hamilton in *The Federalist* Nos. 1, 23, and 70?

   b. Find at least five examples that show how the Constitution limits the government's use of power to guard against tyranny. Are these limitations consistent with Hamilton's arguments in *The Federalist* Nos. 1, 23, and 70? Explain.

   c. Do you agree with Hamilton's position on the need for "energy" in government? Explain.

   d. Do you agree with Hamilton's ideas on how to limit "energy" in government to protect the liberties and rights of individuals? Do his ideas provide for an acceptable balance of power and liberty in the constitutional government? Explain.

PART VII

Introduction

The Constitutional Thought of John Jay

Teaching Plan for Lesson 7

Lesson 7: John Jay and Ratification of the Constitution

VII
Introduction

Washington, Hamilton, and Madison come quickly to mind when the Founders of the nation are considered. However, John Jay is rarely identified by the general public as a major contributor to constitutional thought. Jay's bad luck in 20th-century public relations, was also present during his lifetime. His public often misunderstood what he did. Despite Jay's brilliance and his tremendous contributions to American diplomacy, jurisprudence, and constitutional development, the two crowning achievements of his time happened without him. This possibly cost him his rightful place of honor in the public mind. Jay was not present at the signing of the Declaration of Independence; nor was he elected as a delegate to the Constitutional Convention.

Notwithstanding these omissions, Jay's influence on the founding period is undeniable. His unceasing diplomatic and legal efforts during the Revolution, and his decisive action in negotiations with the British, helped the United States achieve independence and security. His early arguments in favor of a strong, central government for the new nation encouraged the establishment of the Philadelphia Convention in 1787.

Jay continued his support for strong government after the Convention by joining with Hamilton and Madison to produce *The Federalist*—a collection of essays that defended and clarified the principles of the new Constitution. Jay's support helped gain ratification of the new frame of government in New York. His firm belief in a strong government and constitutional authority made him President Washington's choice to be the first Chief Justice of the United States.

Richard B. Morris praises John Jay's many and varied contributions to the establishment of constitutional government in the United States. Morris commends Jay for "his tireless efforts to endow the national government with energy, capacity, and scope and to assert the authority of the people over that of the states. . . ." (*Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution*, 1985, 260).

Part VII includes an essay by Richard B. Morris: "The Constitutional Thought of John Jay." Morris examines Jay's tremendous contributions to development of a strong, central government based on checks and balances and separation of powers. Morris also discusses Jay's influence on ratification of the 1787 Constitution and assesses his contributions to *The Federalist*, the great American classic on the principles of constitutional government. Morris' essay is followed by a Teaching Plan and a Lesson for high school students: "John Jay and Ratification of the Constitution." The Teaching Plan and Lesson provide materials for high school history and government courses on Jay's contributions to American government and constitutional thought.

DOCUMENTS

The Constitutional Thought of John Jay

by RICHARD B. MORRIS

Although John Jay was not one of the favored fifty-five who had attended the Philadelphia Convention, John Adams considered his influence on America's constitutional development to have been more important in bringing about the adoption of the Constitution than "any of the rest, indeed of almost as much weight as all the rest." "That gentleman," Adams insisted, "had as much influence in the preparatory measures in digesting the Constitution and in obtaining its adoption, as any man in the nation."

Adams' tribute cannot be put down to characteristic hyperbole; it is solidly grounded on close observation of Jay's remarkable public career, beginning with the First Continental Congress and including his services as first Chief Justice of the United States. In between, Jay had served as the first chief justice of New York State, as president of the Continental Congress, as an unaccredited minister plenipotentiary to wartime Spain, as a commissioner in Paris centrally involved in making both the Preliminary and Definitive Peace Treaties with Great Britain in 1782-83, and during the Confederation years as secretary for foreign affairs. He shared with Hamilton and Madison the authorship of *The Federalist*, and he climaxed his federal career as first chief justice of the United States.

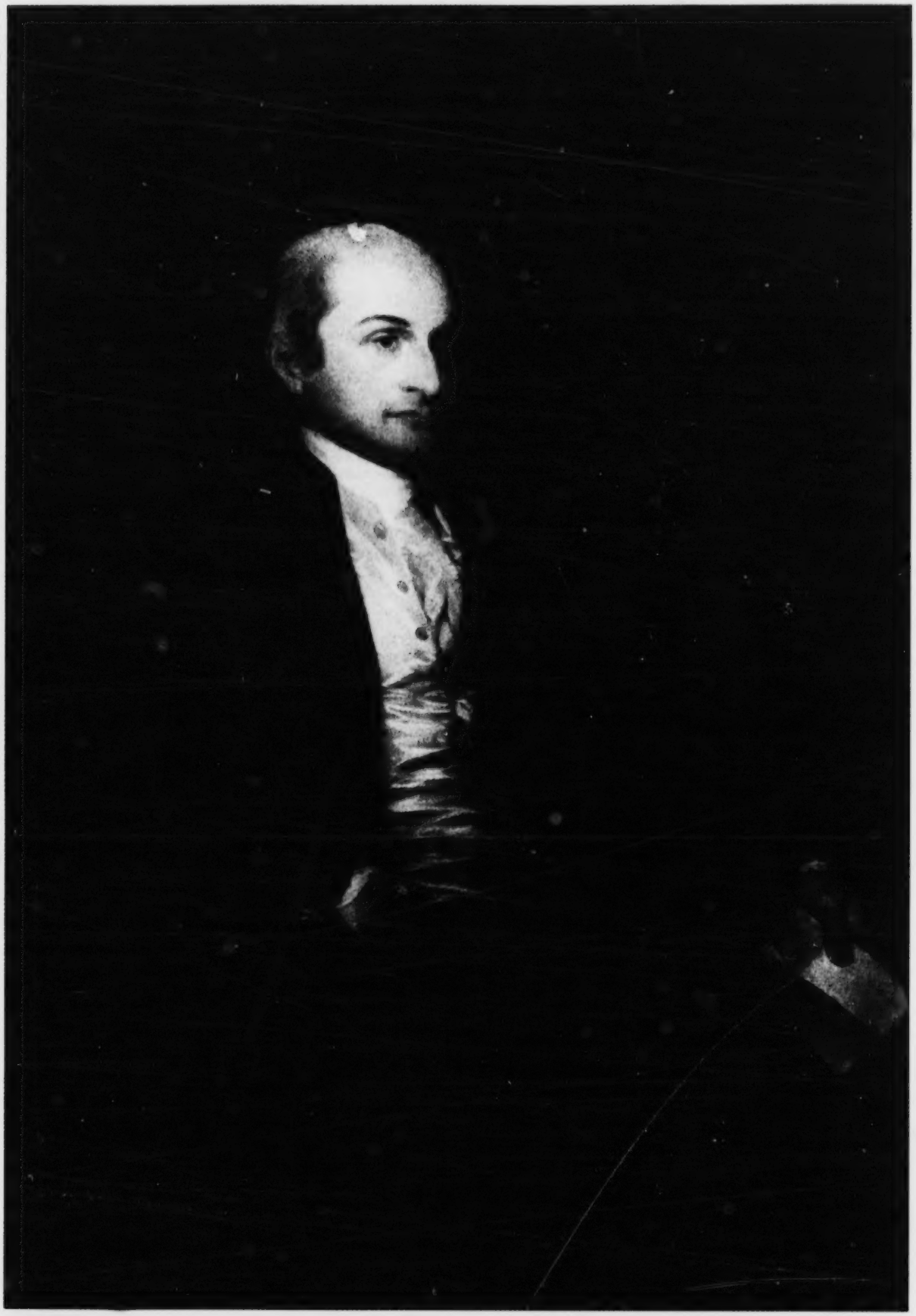
An exponent of written constitutions and constitutionalism, he acted as draftsman of the innovative New York Constitution of 1777, which revealed the influence on Jay of John Adams' *Thoughts on Government*, a pamphlet published in 1776 which advocated mixed government, separation of powers, and checks and balances—all of which were embodied in the New York Constitution. During his brief term as chief justice of the State of New York, he supported the state constitution with enthusiasm and informed grand juries of "those great and equal rights of human nature," including "the rights of conscience and private judgment."

During the nine months Jay served as president of the Continental Congress (December 1778-September 1779), his view became increasingly national, and he was determined to imbue Congress with energy, and to assert its external sovereignty. Since the final version of the Articles of Confederation contained no provision specifying the number of states needed for its ratification, President Jay, noting that by 1779 all the states except Maryland had ratified, expressed the view in a circular letter of September 13, 1779, "From Congress to their Constituents," that the Articles were already in effect and that the people and the states were now joined as one:

> *For every purpose essential to the defence of these states to the progress of the present way and necessary to the attainment of the objects of it, these states now are as fully, legally, and absolutely confederated as it is possible for them to be. . . . Our enemies . . . are mistaken when they suppose us kept together only by a sense of danger. . . . The people of these states were never so cordially united as at this day. By having been obliged to mix with each other, former prejudices have worn off, and their several manners become blended. A sense of common permanent interest, mutual affection (having been brethren in affliction), the ties of consanguinity daily extending constant reciprocity of good offices, similarity in language, in governments, and therefore in manners, the importance, weight and splendor of the union, all conspire in forming a strong chain of connexion, which must forever bind us together.*

Fortunately for the upholders of the doctrine of national supremacy in areas of national sovereignty, Jay was president of Congress at the time of a clash between Congress and Pennsylvania that resulted in Congress' annulling a state law. In 1778, the Pennsylvania Court condemned the sloop *Active* as a prize of war. The Standing Committee of Congress, overriding a Pennsylvania statute of the previous year, reexamined the facts and reversed the decree. When the Pennsylvania Admiralty Court refused to execute this new decree, Jay had a principal hand in writing the resolution which Congress adopted in March, 1779, resolving that "no act of any one State can or ought to destroy the right of appeals to Congress." In words assertive of the fundamental tenets of national sovereignty, Congress went on to declare:

> *That Congress is by these United States invested with the supreme sovereign power of war and peace:*
>
> *That the power of executing the law of nations is essential to the sovereign supreme power of war and peace:*



John Jay, painting believed to have been begun by Gilbert Stuart and finished by John Trumbull. National Portrait Gallery, Smithsonian Institution, Washington, D.C.

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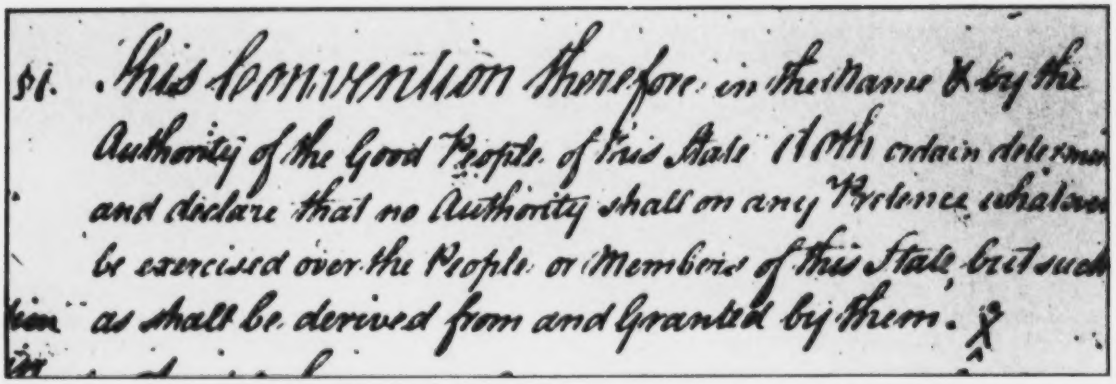


The beginning of the 1777 constitution of New York State, in the drafting of which Jay played a major role. It reads: "This Convention therefore in the Name & by the Authority of the good People of this State doth ordain, determine and declare that no Authority shall on any Pretence whatever be exercised over the People or Members of this State, but such as shall be derived from and Granted by them." New York State Library.

> *That the legality of all captures on the high seas must be determined by the law of nations;*
>
> *That the authority ultimately and finally to decide in all matters and questions touching the law of nations does reside and is vested in the sovereign supreme power of war and peace;*
>
> *That a controul by appeal is necessary, in order to compel a just and uniform execution of the law of nations. . . .*

Years later in the case now known as *Penhallow* v. *Doane* (1795), the Supreme Court took the occasion to affirm Jay's position in 1779 and upheld the jurisdiction in admiralty of the Continental Congress under its inherent war powers.

As peace commissioner in Paris and as secretary for foreign affairs during the years of the Confederation, Jay had brought home to him the weakness of the central government: its inability to make treaties of commerce with Great Britain and Spain or to compel the British to remove their troops from American soil, and its lack of force to stay the hand of the Barbary states in seizing American merchant ships and holding American seamen hostage. Convinced that only through constitutional reformation would America's standing in the world be enhanced, Jay became increasingly committed to examining the nation's problems from a continental rather than a parochial outlook and to advancing views on centralization and the subordination of the states. Alexander Hamilton, perhaps alone among the founders, shared these notions. Because he recognized the depth of feeling for state autonomy, Jay was more discreet than Hamilton about publicizing his views and usually confined them to private correspondence. But the recipients of his letters, who held his views in deep regard, were men of standing. Jay's views are expressed in two letters, the first to his father-in-law, William Livingston, Governor of New Jersey, the second to John Lowell, a Massachusetts commissioner in a current boundary dispute with New York:

John Jay to William Livingston
July 19, 1783

> *The rising power of America is a serious object of apprehension to more than one nation, and every event that may retard it will be agreeable to them. A continental, national spirit should therefore pervade our country, and Congress should be enabled, by a grant of the necessary powers, to regulate the commerce and general concerns of the confederacy.*

John Jay to John Lowell
May 10, 1785

> *It is my first wish to see the United States assume and merit the character of one great nation, whose territory is divided into counties and townships for the like purposes. Until this be done the chain which holds us together will be too feeble to bear much opposition or exertion, and we shall be daily mortified by seeing the links of it giving way and calling for repair one after another.*

As we have seen, Jay had long advocated a system of separation of powers and checks and balances, embodied to a degree in his New York Constitution of 1777. As the time for the Constitutional Convention neared, he spelled out his ideas to Jefferson in 1786;

John Jay to Thomas Jefferson
August 18, 1786

> *I have long thought, and become daily more convinced, that the constitution of our federal government is fundamentally wrong. To vest legislative, judicial, and executive powers in one and the same body of men, and that, too, in a body daily changing its members, can never be wise. In my opinion, these three great departments of sovereignty should be forever separated, and so distributed as to serve*

as checks on each other.

Some months before the Constitutional Convention, he wrote at length to George Washington. He asserted his view that problems with the national government could not be solved merely by granting more power to Congress as it was then constituted. Unless governmental functions were separated, with an independent executive branch, the government could still not function effectively, even with additional authority. Jay went on to advocate a strong executive—although not a king—and an even more powerful central government, capable of removing state officials. Jay expressed concern, however, over the makeup of the pending constitutional convention. He doubted that the state legislatures had the authority to appoint delegations to this convention, and he proposed instead that representatives be chosen by the *people*, "the only source of just authority."

John Jay to George Washington
January 7, 1787

The situation of our affairs calls not only for reflection and prudence, but for exertion. What is to be done? is a common question not easy to answer.

Would the giving any *further degree of power to Congress do the business? I am much inclined to think it would not. . . .*

The executive business of sovereignty depending on so many wills, and those wills moved by such a variety of contradictory motives and inducements, will in general be but feebly done. Such a sovereignty however theoretically responsible, cannot be effectually so in its departments and officers without adequate judicatories. I therefore promise myself nothing very desirable from any change which does not divide the sovereignty into its proper departments. Let Congress legislate—let others execute—let others judge.

Shall we have a king? Not in my opinion while other experiments remain untried. Might we not have a governor-general limited in his prerogatives and duration? Might not Congress be divided into an upper and lower house—the former appointed for life, the latter annually,—and let the governor-general (to preserve the balance), with the advice of a council, formed for that only purpose, of the great judicial officers, have a negative on their acts? Our government should in some degree be suited to our manners and circumstances, and they, you know, are not strictly democratical. What powers should be granted to the government so constituted is a question which deserves much thought. I think the more the better, the States retaining only so much as may be necessary for domestic purposes, and all their principal officers, civil and military, being commissioned and removable by the national government. These are short hints. Details would exceed the limits of a letter, and to you be superfluous.

A convention is in contemplation, and I am glad to find your name among those of its intended members. To me the policy of such a convention appears questionable; their authority is to be derived from acts of the State legislatures. Are the State legislatures authorized, either by themselves or others, to alter constitutions? I think not; they who hold commissions can by virtue of them neither retrench nor extend the powers conveyed to them. Perhaps it is intended that this convention shall not ordain, but only recommend; if so, there is danger that their recommendations will produce endless discussion, perhaps jealousies and party heats.

Would it not be better for Congress plainly and in strong terms to declare that the present Federal Government is inadequate to the purposes for which it was instituted; that they forbear to point out its particular defects or to ask for an extension of any particular powers, lest improper jealousies should thence arise; but that in their opinion it would be expedient for the people of the States without delay to appoint State conventions (in the way they choose their general assemblies), with the sole and express power of appointing deputies to a general convention who, or the majority of whom, should take into consideration the Articles of Confederation, and make such alterations, amendments, and additions thereto as to them should appear necessary and proper, and which being by them or-

dained and published should have the same force and obligation which all or any of the present articles now have? No alterations in the government should, I think, be made, nor if attempted will easily take place, unless deducible from the only source of just authority—the People.

In April, 1787, just weeks before the Constitutional Convention met in Philadelphia, Congress sent a circular letter to the states that Jay had drafted. In it, Congress chastised the states for not adhering to the terms of the Treaty of Paris and pointed out that in this realm of diplomacy, Congress had supreme authority. The supremacy clause of the new Constitution incorporated this view.

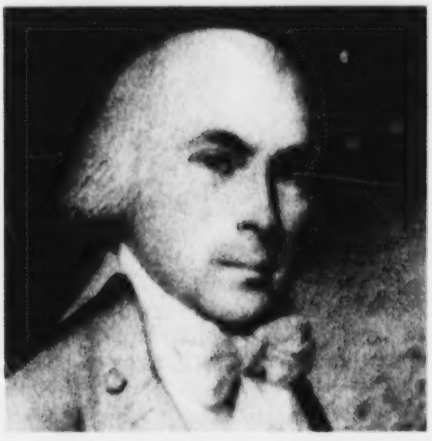
Circular Letter to the States
April 13, 1787

We have deliberately and dispassionately examined and considered the several facts and matters urged by Britain as infractions of the treaty of peace on the part of America, and we regret that in some of the States too little attention appears to have been paid to the public faith pledged by that treaty. Not only the obvious dictates of religion, morality and national honor, but also the first principles of good policy, demand a candid and punctual compliance with engagements constitutionally and fairly made. Our national constitution having committed to us the management of the national concerns with foreign States and powers, it is our duty to take care that all the rights which they ought to enjoy within our Jurisdiction by the laws of nations and the faith of treaties remain inviolate. And it is also our duty to provide that the essential interests and peace of the whole confederacy be not impaired or endangered by deviations from the line of public faith into which any of its members may from whatever cause be unadvisedly drawn. Let it be remembered that the thirteen Independent Sovereign States have by express delegation of power, formed and vested in us a general though limited Sovereignty for the general and national purposes specified in the Confederation. In this Sovereignty they cannot severally participate (except by their Delegates) nor with it have concurrent Jurisdiction, for the 9th Article of the confederation most expressly conveys to us the sole and exclusive right and power of determining on war and peace, and of entering into treaties and alliances &c. When therefore a treaty is constitutionally made ratified and published by us, it immediately becomes binding on the whole nation and superadded to the laws of the land, without the intervention of State Legislatures. Treaties derive their obligation from being compacts between the Sovereign of this, and the Sovereign of another Nation, whereas laws or statutes derive their force from being the Acts of a Legislature competent to the passing of them. Hence it is clear that Treaties must be implicitly received and observed by every Member of the Nation; for as State Legislatures are not competent to the making of such compacts or treaties, so neither are they competent in that capacity, authoritatively to decide on, or ascertain the construction and sense of them.

The Federalist

Jay's constitutional thinking was sharpened and to some extent reshaped in the battle waged over ratification, in which he played a major role. After the Philadelphia Convention, he quickly joined Hamilton in preparing a series of replies to adverse New York newspaper comments appearing in the last week of September 1787 and the first week of October of that year, in articles signed "Cato," a pseudonym attributed to various Antifederalists ranging from Governor George Clinton to Abraham Yates, Jr. Hamilton's conception of *The Federalist* letters captured Jay's fancy at once and he provided the press with "Publius" letters numbers two through five. Turning out copy at a breakneck pace, Jay had his initial letter, No. 2, published in the New York *Independent Journal* on October 31, No. 3 on November 3, No. 4 on November 7, and the fifth letter three days later. Fortunately, James Madison joined the team at this point, for between November 10, when the fifth *Federalist* letter appeared, and some weeks before March 7, 1788—the date of publication of Jay's famous 64th *Feder-*

Alexander Hamilton, *painting by Charles Willson Peale. Independence National Historical Park collection.*



James Madison, *pastel by James Sharples. Independence National Historical Park collection.*

alist, the next and final contribution of Jay to that great seminal work—Jay suffered a serious bout of ill health.

Of the original holograph drafts of the eighty-five *Federalist* letters, all published under the pseudonym "Publius" (the name probably derived from Publius Valerius Publicola, a founder and defender of the Roman Republic), only four are extant, and all four are drafts in Jay's hand.

A careful workman under pressure, Jay labored over his *Federalist* essays, and the published versions differ in some cases in significant ways from the drafts. Thus, in *Federalist* No. 3 Jay deleted the phrase "national courts," which appears in the draft and substituted "courts appointed by, and responsible only to one national government." This change reflected his sensitivity to the fear shared by the Antifederalists of a large federal judiciary administering a body of federal common law and undermining the authority of the state courts. The federal convention had side-stepped the issue in Article III, which vests the judicial power in a Supreme Court "and in such inferior Courts as the Congress may from time to time ordain and establish." Jay tried to handle the ticklish issue with circumspection.

In his draft of *The Federalist* No. 4, Jay anticipated the treatment of parties and factions which developed in Madison's celebrated initial contribution, the tenth *Federalist*. Pursuing the theme of the importance of national union in averting conflicts with foreign powers, Jay begins with a quotation attributed to Addison on the effects of party conflicts. "The Parties and Divisions amongst us may [in] several Ways bring destruction upon our Country at the same time that one united house would secure us against all the Attempts of a Foreign Enemy." Then in the final paragraph of the draft Jay speculated that if foreign governments "find us either . . . destitute of an effectual Government . . . or split into Factions of three or four independent . . . Republics or Confederacies . . . what a poor pitiful Figure will America make?" Jay therein acknowledges the weight of one of the most forceful contemporary arguments against party and faction, the likelihood that they would lead to foreign penetration and the establishment of outposts of alien influence in American public life. In these fleeting references, *which he subsequently suppressed and did not publish*, Jay was obviously referring to the relationship between factions and geographic divisions. He or Hamilton must have concluded that the subject deserved more concentrated attention in a future installment, and it was to be Madison, not Jay, who would pick up the theme of "the spirit of party and faction."

The fifth *Federalist* is an example of how Jay reworked his drafts to cut down verbiage, to use pithier language and to avoid offending the sensibilities of the opponents of the Constitution. His draft for No. 5 strikes this discordant note: "*Wicked Men of great Talents and ambition are the growth of every Soil, and seldom hesitate to precipitate their Country into any Wars and Connections which promote their Designs.*" Surely there was enough history to substantiate the assertion, with its prophetic cast, but sober second thoughts prompted its omission.

Federalist No. 64 constitutes Jay's seminal contribution to the Constitution and foreign affairs. He reworked this essay more than any of its predecessors, constantly seeking a crisper style and deleting evidences of anti-democratic bias. Among these points which he deleted are: (1) "The People at large may sometimes by Negligence or other Causes be led . . . into indiscreet appointments." (2) "The State Legislatures very seldom lose Sight of their obvious Interests, or commit their Management to Men in whom they have little or no Confidence." (3) "The People of America have not been hitherto sufficiently sensible of [the] importance" of "the absolute Necessity of order and System in the Conduct of . . . national Affairs." (4) "We must suppose that Members from each State, however well disposed to promote the general good of the whole, will yet be still more strongly disposed to promote that of their immediate Constituents." These four statements reflect Jay's own doubts about the judgment of the people and his conviction that state legislatures were actuated by parochial rather than national interests. On second thought he must have realized that an essay de-

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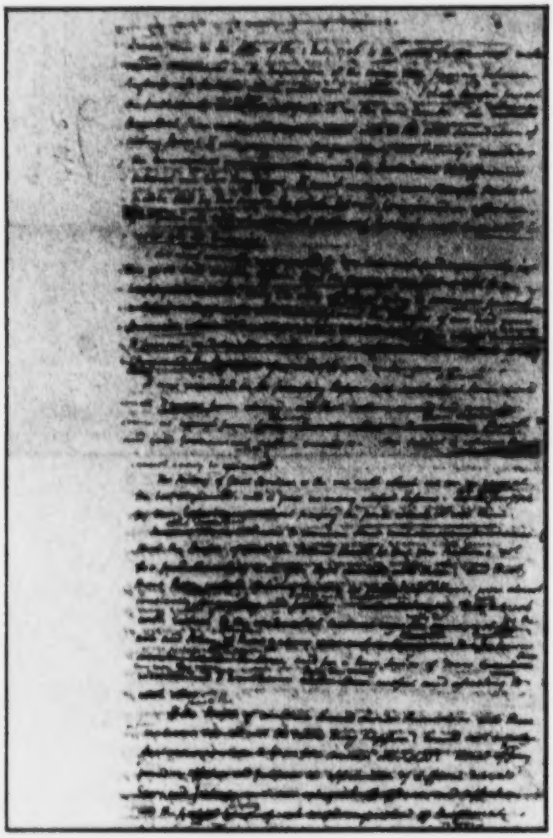

Draft of The Federalist, No. 5, in Jay's hand, with emendations. Rare Book and Manuscript Library, Columbia University.

signed to have popular appeal and conciliate those jealous of maintaining state sovereignty should not strike either note.

Again in his original draft of No. 64, Jay revealed his bias toward consolidation. "Every objection to the federal Constitution which [these criticisms] imply may at least with equal force be applied to this State [New York]. Will the Governor and the Legislature of New York make Laws with an equal Eye to the Interests of all the Counties." On reflection Jay deleted this passage from his final text. The notion of reducing the status of the states vis-à-vis the federal government to that comparable of the standing of their own counties within the state—a notion privately expressed in the letter to Lowell written back in 1785—would have ignited those very fires of suspicion which *The Federalist* was designed to allay.

Address to the People of New York

Finally, some time after *Federalist* No. 64, Jay, in the early spring of '88, published his eloquent *Address to the People of New York*. Written prior to the spring election of delegates to the state ratifying convention, the *Address* was indubitably aimed at influencing the electors' choices. Unlike the relative short letters of "Publius," Jay's relatively lengthy *Address* not only presented a masterly critique of the weakness of the Confederation government under the Articles but dealt with specific Antifederalist criticisms, most importantly those dealing with the absence of a bill of rights in the proposed Constitution and the desirability, as the Antifederalists saw it, of calling a second convention to introduce a variety of amendments. Below are some of the most pertinent sections from Jay's *Address*.

Jay begins with the powerlessness of the Congress of the Confederation:

> *. . . By the Confederation as it now stands, the direction of general and national affairs is committed to a single body of men—viz., the Congress. They may make war, but they are not empowered to raise men or money to carry it on. They may make peace, but without the means to see the terms of it observed. They may form alliances but without ability to comply with the stipulations on their part. They may enter into treaties of commerce, but without power to enforce them at home or abroad. They may borrow money, but without having the means of repayment. They may partly regulate commerce, but without authority to execute their ordinances. They may appoint ministers and other officers of trust, but without power to try or punish them for misdemeanors. They may resolve, but cannot execute either with despatch or with secrecy. In short, they may consult and deliberate, and recommend, and make requisitions, and they who please may regard them.*

He then goes on to lament the condition of American commerce:

> *From this new and wonderful system of government it has come to pass that almost every national object of every kind is at this day unprovided for; and other nations, taking the advantage of its imbecility, are daily multiplying commercial restraints upon us. Our fur trade is gone to Canada, and British garrisons keep the keys of it. Our ship-yards have almost ceased to disturb the repose of the neighbourhood by the noise of the axe and the hammer; and while foreign flags fly tri-*

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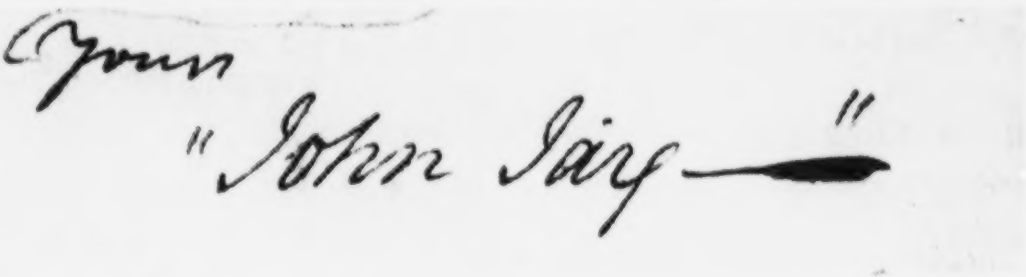
umphantly above our highest houses, the American stars seldom do more than shed a few feeble rays about the humbler masts of river sloops and coasting schooners. The greater part of our hardy seamen are ploughing the ocean in foreign pay, and not a few of our ingenious shipwrights are now building vessels on alien shores. Although our increasing agriculture and industry extend and multiply our productions, yet they constantly diminish in value; and although we permit all nations to fill our country with their merchandises, yet their best markets are shut against us. Is there an English, or a French, or a Spanish island or port in the West Indies to which an American vessel can carry a cargo of flour for sale? Not one. The Algerines exclude us from the Mediterranean and adjacent countries; and we are neither able to purchase nor to command the free use of those seas. Can our little towns or larger cities consume the immense productions of our fertile country? or will they without trade be able to pay a good price for the proportion which they do consume? . . . Our debts remain undiminished, and the interest on them accumulating; our credit abroad is nearly extinguished, and at home unrestored; they who had money have sent it beyond the reach of our laws, and scarcely any man can borrow of his neighbour. Nay, does not experience also tell us that it is as difficult to pay as to borrow; that even our houses and lands cannot command money; that law-suits and usurious contracts abound; that our farms fall on executions for less than half their value; and that distress in various forms and in various ways is approaching fast to the doors of our best citizens? . . .

Next, Jay refutes those who allege a threat to individual liberty under the proposed Constitution:

We are told, among other strange things, that the liberty of the press is left insecure by the proposed Constitution; and yet that Constitution says neither more nor less about it than the constitution of the State of New York does. We are told that it deprives us of trial by jury; whereas the fact is, that it expressly secures it in certain cases, and takes it away in none. It is absurd to construe the silence of this, or of our own constitution, relative to a great number of our rights, into a total extinction of them. Silence and blank paper neither grant nor take away anything. Complaints are also made that the proposed Constitution is not accompanied by a bill of rights; and yet they who make the complaints know, and are content, that no bill of rights accompanied the constitution of this State. In days and centuries when monarchs and their subjects were frequently disputing about prerogative and privileges, the latter then found it necessary, as it were, to run out the line between them, and oblige the former to admit, by solemn acts, called bills of rights, that certain enumerated rights belonged to the people, and were not comprehended in the royal prerogative. But, thank God, we have no such disputes; we have no monarchs to contend with or demand admissions from. The proposed government is to be the government of the people; all its officers are to be their officers, and to exercise no rights but such as the people commit to them. The Constitution serves only to point out that part of the people's business which they think proper by it to refer to the management of persons therein designated; those persons are to receive that business to manage, not for themselves and as their own, but as agents and overseers for the people, to whom they are constantly responsible, and by whom only they are to be appointed. . . .

Finally, Jay warns that no better document could emerge from a second convention:

Suppose this plan to be rejected, what measures would you propose for obtaining a better? Some will answer: "Let us appoint another Convention; and, as everything has been said and written that can well be said and written on the subject, they will be better informed than the former one was, and consequently be bet-



Jay's signature, taken from letter to Gouverneur Morris, October 13, 1782. Gouverneur Morris papers, Rare Book and Manuscript Library, Columbia University.

ter able to make and agree upon a more eligible one."

This reasoning is fair, and, as far as it goes, has weight; but it nevertheless takes one thing for granted which appears very doubtful; for, although the new Convention might have more information, and perhaps equal abilities, yet it does not from thence follow that they would be equally disposed to agree. The contrary of this position is most probable. You must have observed that the same temper and equanimity which prevailed among the people on former occasions no longer exist. We have unhappily become divided into parties, and this important subject has been handled with such indiscreet and offensive acrimony, and with so many little unhandsome artifices and misrepresentations, that pernicious heats and animosities have been kindled, and spread their flames far and wide among us. . . . A Convention formed at such a season, and of such men, would be too exact an epitome of the great body that named them. The same party views, the same propensity to opposition, the same distrusts and jealousies, and the same unaccommodating spirit which prevail without, would be concentrated and ferment with still greater violence within. . . . Suspicion and resentment create no disposition to conciliate, nor do they infuse a desire of making partial and personal objects bend to general union and common good. The utmost efforts of that excellent disposition were necessary to enable the late Convention to perform their task; and although contrary causes sometimes operate similar effects, yet to expect that discord and animosity should produce the fruits of confidence and agreement, is to expect "grapes from thorns and figs from thistles."

Ironically, it was Jay who, to conciliate the Antifederalists at the New York State Ratifying Convention, drafted the circular letter to the states calling for a second convention, perhaps a tongue-in-cheek performance, but one that caused dismay to James Madison. The rapid adoption of Madison's first ten amendments fortunately made a second convention superfluous, but its spectre has still not been laid to rest.

In sum, Jay may well have been a patrician with a revolutionary past, but he remained committed to the ideals of a republic in which the people, directed by an elite of virtue and education, would govern, and to a national government with power to act. His call for the establishment of a strong national government and for the creation of a new kind of republican federalism constituted a sharp break with the political ways of the past, to which his opponents, the states' rights advocates, wished to adhere. Because of the coherence of his thinking and the eloquence of his expression, his views profoundly influenced the product of the Constitutional Convention.

His closing public life was marked in rapid succession by his chief justiceship (1789-1795), during which he negotiated the 1794 treaty that bears his name settling some, but by no means all, of the differences with Great Britain; and a two-term governorship of New York. The Jeffersonian revolution of 1800 spelled finis to the political ambitions of High Federalists like John Jay. But those who would dismiss him as sounding like the tired voice of the repudiated leadership fail to acknowledge that he was one of those who had brought a great revolution to a successful conclusion, who had shaped the Constitution built on revolutionary principles, and who had remained at heart a man convinced that inequality, the European caste system, and all the trappings of the *ancien regime* had no place in a New World, to whose peace and security he himself had contributed so much.

Suggested additional reading:

Richard B. Morris, ed., *John Jay: The Making of a Revolutionary, Unpublished Papers, 1745-1780* (1975).

———, *John Jay: The Winning of the Peace, Unpublished Papers, 1780-1784* (1980).

———, *John Jay: Confederation and Union; State Papers and Private Correspondence, 1784-1789* (forthcoming).

———, *John Jay: The Nation and the Court (1967).*

———, *Witnesses at the Creation: Hamilton, Madison, Jay and the Constitution* (1985).

Frank Monaghan, *John Jay* (1935).

George Pellew, *John Jay* (1890; reprinted, 1980).

Richard B. Morris is Gouverneur Morris professor of history emeritus at Columbia University, editor of the papers of John Jay, and co-chair of Project '87. He is author of numerous works in the period, including the Bancroft-award-winning *The Peacemakers: The Great Powers and American Independence* (1965; new ed., 1983), and the recently published *Witnesses at the Creation*, cited above.

VII
Teaching Plan for Lesson 7
John Jay and Ratification of the Constitution

Objectives

Students are expected to

1) identify Jay's primary arguments for a strong central government and effective federal union;

2) understand how Jay's ideas are exemplified in the Constitution;

3) understand Jay's influence on ratification of the Constitution of 1787;

4) interpret and appraise John Jay's ideas on constitutional government in *The Federalist*, Nos. 2, 4, and 64;

5) interpret and appraise John Jay's arguments for ratification of the 1787 Constitution in his *Address to the People of New York*;

6) understand Jay's reasons for omitting from his final draft of *The Federalist* No. 64 some of his original arguments for the 1787 Constitution.

Preparing to Teach the Lesson

Read the essay by Richard M. Morris, "The Constitutional Thought of John Jay." Pay special attention to these parts of Morris' essay: (a) Jay's letter to his associates urging strong central power, checks and balances, and separation of powers, (b) Jay's ideas on constitutional government in his *Federalist* essays, and (c) Jay's *Address to the People of New York* discussing weaknesses in the Articles of Confederation.

Read the Lesson, "John Jay and Ratification of the 1787 Constitution." Pay special attention to the abridged and edited versions of *The Federalist* Nos. 2, 4, and 64 that emphasize the importance of central authority and an effective federal union.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Write the name John Jay on the chalkboard and show the picture of Jay to students, which is included with the essay by Richard B. Morris. Ask them what they know about Jay and his contributions to the founding of the United States during the 1780s and 1790s. Write on the chalkboard, or read to students, these achievements of Jay:

- Primary author of the first New York state constitution.
- Member of the American delegation that negotiated the Treaty of 1783, which ended the War of Independence.
- Head of foreign affairs for the U.S. government under the Articles of Confederation.
- Co-author of *The Federalist* papers, written to support ratification of the 1787 Constitution.
- Delegate and top-level leader of the Federalist forces at the New York Ratifying Convention of 1788.
- First Chief Justice of the United States.

Have the students think about Jay's achievements. Then ask them how they would compare his accomplishments with other so-called "Founding Fathers." Does he deserve to be rated as one of the most important of the Founders of the United States?

Finish this opening segment of the lesson by quoting the first paragraph of the essay—"The Constitutional Thought of John Jay" by Richard B. Morris. Point out that Professor Morris rates Jay as one of the most important of the Founders. Tell students that the remainder of the Lesson treats Jay's ideas about ratification of the 1787 Constitution. The Lesson emphasizes Jay's arguments for the Constitution in three of *The Federalist* papers: Numbers 2, 4, and 64.

Developing the Lesson

Ask students to read the introductory pages of the Lesson and the segments on *The Federalist* Nos: 2, 4, and 64. Require students to prepare answers to the questions that follow each document.

After they complete this reading and writing assignment, call upon students to respond in class to the questions. Always require students to justify or support their answers with evidence or examples from the documents. Encourage students to ask one another to use information in the documents to explain or back up their responses to questions.

Concluding the Lesson

Assign the last segments of the Lesson: The part on "John Jay and the New York Ratifying Convention" and the three sets of questions and activities at the end of the Lesson.

Conduct a concluding discussion on the three sets of questions and activities under these headings:

- Reviewing Facts and Main Ideas,
- Interpreting Ideas in Documents,
- Making Judgments about Ideas in Documents.

The correct answers to the "Interpretation" segment are these statements: numbers 1, 3, 7, 9. Require students to use evidence from specific documents in this Lesson to support their selection of items 1, 3, 7, 9 as compatible with the ideas of John Jay. Require them also to draw upon the contents of the documents to explain why the other items—2, 4, 5, 6, 8, 10—do NOT agree with Jay's ideas.

In your discussion of the "Making Judgments" segment, you should introduce the following comments by Richard B. Morris taken from his essay on Jay.

Professor Morris explains Jay's omission of certain statements from the final draft of *Federalist* 64:

> These ... statements reflect Jay's own doubts about the judgment of the people and his conviction that state legislatures were actuated by parochial rather than national interests. On second thought he must have realized that an essay designed to have popular appeal and conciliate those jealous of maintaining state sovereignty should not strike either note....
>
> ... The notion of reducing the status of the states vis-a-vis the federal government to that comparable of the standing of their own counties within the state would have ignited those very fires of suspicion which *The Federalist* was designed to allay.

Ask students to compare their answers with Morris' explanation.

VII
Lesson 7
John Jay and Ratification of the Constitution

In 1787–1788 Federalists and Anti-Federalists argued over ratification of the 1787 Constitution; the debate was intense. One Federalist who worked hard to gain support in New York for the Constitution was John Jay.

Jay had a distinguished reputation and tremendous experience in politics, law, and diplomacy. He was a prosperous lawyer who had authored the New York Constitution of 1777. Jay had also served with Benjamin Franklin and John Adams in negotiating the Treaty of 1783, which ended the American Revolution. As Secretary of Foreign Affairs under the Articles of Confederation, he directed diplomacy for a virtually friendless nation. John Jay also served as first Chief Justice of the United States. Finally, he negotiated a treaty with Great Britain for the federal government.

In 1787 Alexander Hamilton invited John Jay to help him write *The Federalist*, a series of papers to explain and support ratification of the 1787 Constitution. Jay became a co-author, with Hamilton and James Madison, of *The Federalist* papers. Hamilton, major author of *The Federalist*, wrote 51 of the 85 papers. Madison wrote 29 of *The Federalist* papers. Jay wrote only five papers (Nos. 2–5 and 64) because an untimely illness forced him to withdraw from the project. Most of *The Federalist* papers were printed originally in New York City newspapers from October 27, 1787 until April 2, 1788. The complete set (85 papers) was published in May 1788 by McLean and Company of New York City.

Each *Federalist* paper was attributed to Publius, a pseudonym associated with Publius Valerius Publicola, a great defender of the ancient Roman Republic. Hamilton wrote the first *Federalist* paper, which was printed on October 27, 1787 in the *Independent Journal* of New York City. Within ten days, John Jay wrote his first four *Federalist* papers (Nos. 2–5). These essays are clear, thoughtful arguments, showing the need for strength in a central government that can provide for a strong union of states.

The United States could only achieve greatness, according to Jay, if the states were willing to give up some of their power to build a strong central government. He urged fellow citizens to realize the importance such national strength would have in the world. Jay believed that the states needed to look beyond their own boundaries to the power that, momentarily, was escaping the whole nation. Without a strong central government, foreign powers could keep the nation weak and cause divisions among the thirteen states.

John Jay's Ideas in *The Federalist* Nos. 2 and 4

Examine Jay's arguments for the 1787 Constitution, which are presented in the following excerpts from *The Federalist* Nos. 2 and 4. Then answer the questions that follow each of the two documents.

The Federalist No. 2

October 31, 1787
To the People of the State
of New York:

When the people of America reflect that they are now called upon to decide a question, which, in its consequences, must prove one of the most important, that ever engaged their attention, the propriety of their taking a very comprehensive, as well as a very serious, view of it will be evident.

Nothing is more certain than the indispensable necessity of Government; and it is equally undeniable that whenever and however it is instituted, the people must cede to it some of their natural rights, in order to vest it with requisite powers. It is well worthy of consideration, therefore, whether it would conduce more to the interest of the people of America that they should, to all general purposes, be one nation, under one federal government, than that they should divide themselves into separate confederacies and give to the head of each the same kind of powers which they are advised to place in one national government.

It has until lately been a received and uncontradicted opinion that the prosperity of the people of America depended on their continuing firmly united, and the wishes, prayers, and efforts of our best and wisest Citizens have been constantly directed to that object. . . .

With equal pleasure I have as often taken notice that Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs, and who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established their general Liberty and Independence.

This country and this people seem to have been made for each other, and it appears as if it was the design of Providence that an inheritance so proper and convenient for a band of brethren, united to each other by the strongest ties, should never be split into a number of unsocial, jealous, and alien sovereignties. . . .

. . . To preserve and perpetuate [the Union of American States] was the great object of the people in forming [the Constitutional Convention], and it is also the great object of the plan [Constitution of 1787] which the convention has advised them to adopt. . . . They who promote the idea of substituting a number of distinct confederacies in the room of the plan of the convention seem clearly to foresee that the rejection of it would put the continuance of the Union in the utmost jeopardy. That certainly would be the case, and I sincerely wish that it may be as clearly foreseen by every good citizen that whenever the dissolution of the Union arrives, America will have reason to exclaim, in the words of the poet: "FAREWELL! A LONG FAREWELL TO ALL MY GREATNESS."

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Reviewing Ideas in *The Federalist* No. 2

1. What is the central question about government raised in this paper?
2. What is John Jay's answer to this central question identified in response to item 1?
3. What evidence and arguments does Jay use to support his answer to the central question of *The Federalist* No. 2?
4. What is your judgment of Jay's position?
5. What are the strengths and weaknesses of his position?
6. How might an opponent of the 1787 Constitution have tried to argue against or refute Jay's position?

***The Federalist* No. 4**

November 7, 1787
To the People of the State
of New York:

. . . The safety of the people of America against dangers from foreign force depends not only on their forbearing to give just causes of war to other nations, but also on their placing and continuing themselves in such a situation as not to invite hostility or insult. . . .

Wisely, therefore, do they consider union and a good national government as necessary to put and keep them in such a situation as, instead of inviting war, will tend to repress and discourage it. That situation consists in the best possible state of defense, and necessarily depends on the government, the arms, and the resources of the country. . . .

But whatever may be our situation, whether firmly united under the national government, or split into a number of confederacies, certain it is that foreign nations will know and view it exactly as it is; and they will act towards us accordingly. If they see that our national government is efficient and well administered, our trade prudently regulated, our militia properly organized and disciplined, our resources and finances discreetly managed, our credit reestablished, our people free, contented, and united, they will be much more disposed to cultivate our friendship than provoke our resentment. If, on the other hand, they find us either destitute of an effectual government (each State doing right or wrong, as to its rulers may seem convenient), or split into three or four independent and probably discordant republics or confederacies, one inclining to Britain, another to France, and a third to Spain, and perhaps played off against each other by the three, what a poor, pitiful figure will America make in their eyes! How liable would she become not only to their contempt, but to their outrage; and how soon would dear-bought experience proclaim that when a people or family so divide, it never fails to be against themselves.

PUBLIUS

Reviewing Ideas in *The Federalist* No. 4

1. What is John Jay's main point about how the United States can maintain national security against threats from foreign nations? Write a topic sentence that states this main idea.
2. How does Jay support or justify his main point about maintaining the security and safety of the United States against foreign powers? Write two statements in support of your topic sentence.
3. What is your judgment or opinion of Jay's main point about national security? Judge his ideas with reference to the situation of the United States in 1787 and today. Write one paragraph that pertains to 1787. Write a second paragraph that pertains to the United States today.

John Jay's Ideas in *The Federalist* No. 64

John Jay's final contributions to *The Federalist* was paper number 64. His topic was participation of the Senate in the treaty-making process. He drew upon his own experience in foreign affairs to defend the foreign policy role and powers of the Senate and Presidency in the 1787 Constitution.

Examine Jay's ideas in *The Federalist* No. 64, which are presented in the following excerpt from this document. Then answer the questions that follow the document.

***The Federalist* No. 64**

March 5, 1788
To the People of the State
of New York:

. . . The second section [of the 1787 Constitution] gives power to the President, "by and with the advice and consent of the Senate, to make treaties, PROVIDED TWO THIRDS OF THE SENATORS PRESENT CONCUR."

The power of making treaties is an important one, especially as it relates to war, peace, and commerce; and it should not be delegated but in such a mode and with such precautions as will afford the highest security that it will be exercised by men the best qualified for the purpose, and in the manner most conducive to the public good. . . .

. . . It was wise, therefore, in the convention, to provide, not only that the power of making treaties should be committed to able and honest men, but also that they should continue in place a sufficient time to become perfectly acquainted with our national concerns, and to form and introduce a system for the management of them. The duration prescribed [six-year term of office] is such as will give them [Senators] an opportunity of greatly extending their political information, and of rendering their accumulating experience more and more beneficial to their country. Nor has the convention discovered less prudence in providing for the frequent elections of senators in such a way as to obviate the inconvenience of periodically transferring those great affairs entirely to new men; for by leaving a considerable residue of the old ones in place, uniformity and order, as well as constant succession of official information, will be preserved. . . .

. . . [I]n the negotiation of treaties of whatever nature . . . perfect *secrecy* and immediate *dispatch* are sometimes requisite. There are cases where the most useful intelligence may be obtained, if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular assembly. The convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such manner as prudence may suggest. . . .

. . . [T]he Constitution provides that our negotiations for treaties shall have every advantage which can be derived from talents, information, integrity, and deliberate investigations, on the one hand, and from secrecy and dispatch on the other. . . .

As all the States are equally represented in the Senate, and by men the most able and the most willing to promote the interest of their constituents, they will all have an equal degree of influence in that body, especially while they continue to be careful in appointing proper persons, and to insist on

their punctual attendance. In proportion as the United States assume a national form and a national character, so will the good of the whole be more and more an object of attention; and the government must be a weak one indeed if it should forget that the good of the whole can only be promoted by advancing the good of each of the parts or members which compose the whole. It will not be in the power of the President and Senate to make any treaties by which they and their families and estates will not be equally bound and affected with the rest of the community; and, having no private interests distinct from that of the nation, they will be under no temptation to neglect the latter. . . .

. . . In short, as the Constitution has taken the utmost care that they shall be men of talents, and integrity, we have reason to be persuaded that the treaties they make will be as advantageous as, all circumstances considered, could be made; and so far as the fear of punishment and disgrace can operate, that motive to good behavior is amply afforded by the article on the subject of impeachments.

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Reviewing Ideas in *The Federalist* No. 64

1. Refer to Article 1, Sections 1 and 8 and Article II, Sections 1 and 2 of the U.S. Constitution. What do these parts of the Constitution say about the powers and duties of the executive and legislative branches to make treaties and conduct foreign affairs?

2. How does John Jay, in *The Federalist* No. 64, try to justify or support the treaty-making powers granted in the 1787 Constitution? Identify at least two reasons presented by Jay in support of the constitutional treaty-making powers.

3. What is your opinion of Jay's arguments for the treaty-making powers in the Constitution? Present an argument for or against Jay's position.

John Jay and the New York Ratifying Convention

In February 1788, the New York legislature voted to call a convention to decide whether to ratify the 1787 Constitution. By this time six states had ratified the document: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, and Massachusetts.

Prior to the election, John Jay wrote a lengthy paper to the New York voters, which was printed in newspapers of the state. Jay tried to persuade New Yorkers to select delegates to the state ratifying convention who would support the 1787 Constitution. His opening statements in this *Address to the People of New York* identify weaknesses in government under the Articles of Confederation. Jay and his Federalist allies wanted to overcome these weaknesses by replacing the Articles with the 1787 Constitution.

Address to the People of New York 1788

. . . By the Confederation as it now stands, the direction of general and national affairs is committed to a single body of men—viz., the Congress. They may make war, but they are not empowered to raise men or money to carry it on. They may make peace, but without the means to see the terms of it observed. They may form alliances but without ability to comply with the stipulations on their part. They may enter into treaties of commerce, but without power to enforce them at home or abroad. They may borrow money, but without having the means of repayment. They may partly regulate commerce, but without authority to execute their ordinances. They may appoint ministers and other officers of trust, but without power to try or punish them for misdemeanors. They may resolve, but cannot execute either with despatch or with secrecy. In short, they may consult and deliberate, and recommend, and make requisitions, and they who please may regard them [or ignore them]. . . .

On June 17, 1788, the New York Ratifying Convention began its work. Both John Jay and Alexander Hamilton had been elected to serve as delegates. They led the Federalist forces at the convention in debates with their Anti-Federalist foes.

By the time the New York convention met, eight states had ratified the Constitution. A few days later, on June 21, 1788, New Hampshire became the ninth state to approve the Constitution. On June 25, the Virginia Ratifying Convention also approved the new frame of government. However, the Anti-Federalists of New York were unmoved in their opposition to the Constitution and continued to argue against it.

Eventually, Hamilton, Jay, and the other New York Federalists achieved their objective. On July 26, 1788, the New York Convention voted to ratify the Constitution by the narrow margin of 30 votes for the 1787 Constitution and 27 votes against it.

The prior ratification of New Hampshire and Virginia certainly influenced the outcome. Most people of New York did not want their state to be outside the Union, which had become an accomplished fact before the final vote of the New York Convention. The inspired leadership of John Jay and Alexander Hamilton was a major reason for the Federalist victory in New York. According to historian Richard B. Morris, "The cause of the Constitution owed most to the brilliant oratorical efforts of Hamilton and the parts played in open convention and behind the scenes by the universally respected, conciliatory, open-minded, and persuasive Mr. Jay" (*Witnesses at the Creation*, 1985, 248).

Reviewing Facts and Main Ideas

1. What accomplishments had John Jay achieved before and after 1787?

2. Why was Jay so intent on the creation of a strong central government?

3. How do Articles 1–3 in the Constitution address the weaknesses Jay identifies in the Articles of Confederation?

Interpreting Ideas in Documents

Which of the following statements agree with ideas in *The Federalist* Nos. 2, 4, and 64 and the 1788 *Address to The People of New York*? Place a checkmark in the space next to each statement that agrees with Jay's ideas in these four documents. Support and explain your choices by referring to specific parts of *The Federalist* Nos. 2, 4, and 64 and the *Address to the People of New York*.

___ 1. National unity and strength are deterrents to attack by a foreign power.

___ 2. In a federal system of government, the rights and powers of the several states are more important than the authority of the general government.

___ 3. The major question facing America in 1787 was whether or not to form a strong federal union or to divide themselves into separate confederacies.

___ 4. A strong and effective federal government would lead inevitably to the loss of individual rights and liberties.

___ 5. In a free government, the powers and duties of treaty-making are granted to the House of Representatives—the people's branch of the government.

___ 6. The 1787 Constitution, in line with John Jay's ideas, grants treaty-making power exclusively to Congress.

___ 7. Sometimes it is important for a government to maintain secrecy in its conduct of foreign affairs.

___ 8. A major strength of the Articles of Confederation was the power of Congress to manage foreign affairs.

___ 9. A major weakness of the Articles of Confederation was the inability of Congress to enforce its decisions throughout the United States.

___ 10. Tyranny is acceptable, for short periods of time, if it is in order to defend the United States against dangers from foreign powers.

Making Judgments about Ideas in Documents

Carefully review the excerpt from *The Federalist* No. 64. Then examine the two statements below, which were included in an early draft of paper number 64. Jay, however, omitted these two statements from his final draft of *The Federalist* No. 64.

---

a. "The People of America have not been hitherto sufficiently sensible of [the] importance [of] the absolute Necessity of order and System in the Conduct of ... national Affairs."

b. "We must suppose that Members from each State, however well disposed to promote the general good of the whole, will yet be still more strongly disposed to promote that of their immediate Constituents."

---

1. What is the point of each statement? Explain the meaning of the statements in your own words.

2. Why do you think John Jay omitted these two statements from the published version of *The Federalist* No. 64? (Clue: Remember that Jay's purpose was to influence citizens to support ratification of the 1787 Constitution. Thus, he did not want to offend the majority of the citizens.)

3. What is your opinion of Jay's ideas in the two statements he omitted from his final draft of *The Federalist* No. 64? Would inclusion of these ideas have improved Jay's arguments for the 1787 Constitution?

4. Select one of Jay's main ideas, from *The Federalist* Nos. 2, 4, or 64, which you judge as his best idea on the merits of the 1787 Constitution. Why did you rank this idea as Jay's best one?

PART VIII

Introduction

Thomas Jefferson: Writings on the Constitution

Teaching Plan for Lesson 8

Lesson 8: Thomas Jefferson's Response to the Constitution of 1787

VIII
Introduction

Thomas Jefferson professed strong beliefs about liberty for individuals as the end of government. He expressed this faith in 1776, in the second paragraph of The Declaration of Independence: "We hold these truths to be self evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. . . ."

According to Jefferson, the creation of a free government was "the whole object of the present controversy"—the conflict with Britain that had led to The Declaration of Independence. The American Revolution would be a failure, said Jefferson, unless it achieved the higher goal of human freedom through a workable constitutional government based on the will of the people.

Did the Constitution of 1787 meet Thomas Jefferson's standards for a free government? He received a copy of this document in early November 1787, about seven weeks after the conclusion of the Federal Convention in Philadelphia. Jefferson was in Paris during the framing and ratifying of the Constitution, representing the United States to the government of France.

At first, Jefferson was disappointed in the new frame of government. "I confess there are things in it which stagger all my dispositions," he wrote to John Adams (November 17, 1787). Soon, however, he changed his opinion and acknowledged, "There is a great mass of good in it, in a very desirable form; but there is also to me a bitter pill or two" (letter to Edward Carrington, December 21, 1787).

The bitterest pill was the omission of a Bill of Rights. Jefferson concentrated his thoughts and actions on removing this alleged defect. In this effort, he was true to the core values expressed in The Declaration of Independence. Charles T. Cullen, an expert on the constitutional thought of Thomas Jefferson, says, "His fundamental attitude toward democratic government had found expression early and most eloquently in The Declaration of Independence, and his commitment to democracy and republican government never waned."

Part VIII includes an essay by Charles T. Cullen, "Thomas Jefferson: Writings on the Constitution." Cullen discusses Jefferson's basic beliefs about human rights and constitutional democracy, and he examines Jefferson's critical review and general acceptance of the U.S. Constitution. The essay by Cullen is followed by a Teaching Plan and Lesson for high school students: "Thomas Jefferson's Response to the Constitution of 1787." The Teaching Plan and Lesson are resources for high school history and government teachers that emphasize core ideas and documents in the civic heritage of the United States. Documents featured in these materials are listed below:

- Letter from Jefferson to James Madison, December 20, 1787.
- Letter from Jefferson to George Washington, May 2, 1788.
- Letter from Jefferson to Francis Hopkinson, March 13, 1789.
- Letter from Jefferson to James Madison, March 15, 1789.

DOCUMENTS

Thomas Jefferson: Writings on the Constitution

by CHARLES T. CULLEN

The United States Constitution occupied Thomas Jefferson's thoughts periodically throughout his lifetime. His fundamental attitude toward democratic government had found expression early and most eloquently in the Declaration of Independence, and his commitment to democracy and republican government never waned. Throughout the birth of our nation, a unique assemblage of talented Americans discussed the best form of unified government with a level of intense interest never again seen in this country, except perhaps during the Civil War. Even then, the deep differences in attitudes toward slavery made creative and peaceful political solutions impossible. The contrast is stark next to Jefferson's boastful claim about America in 1787:

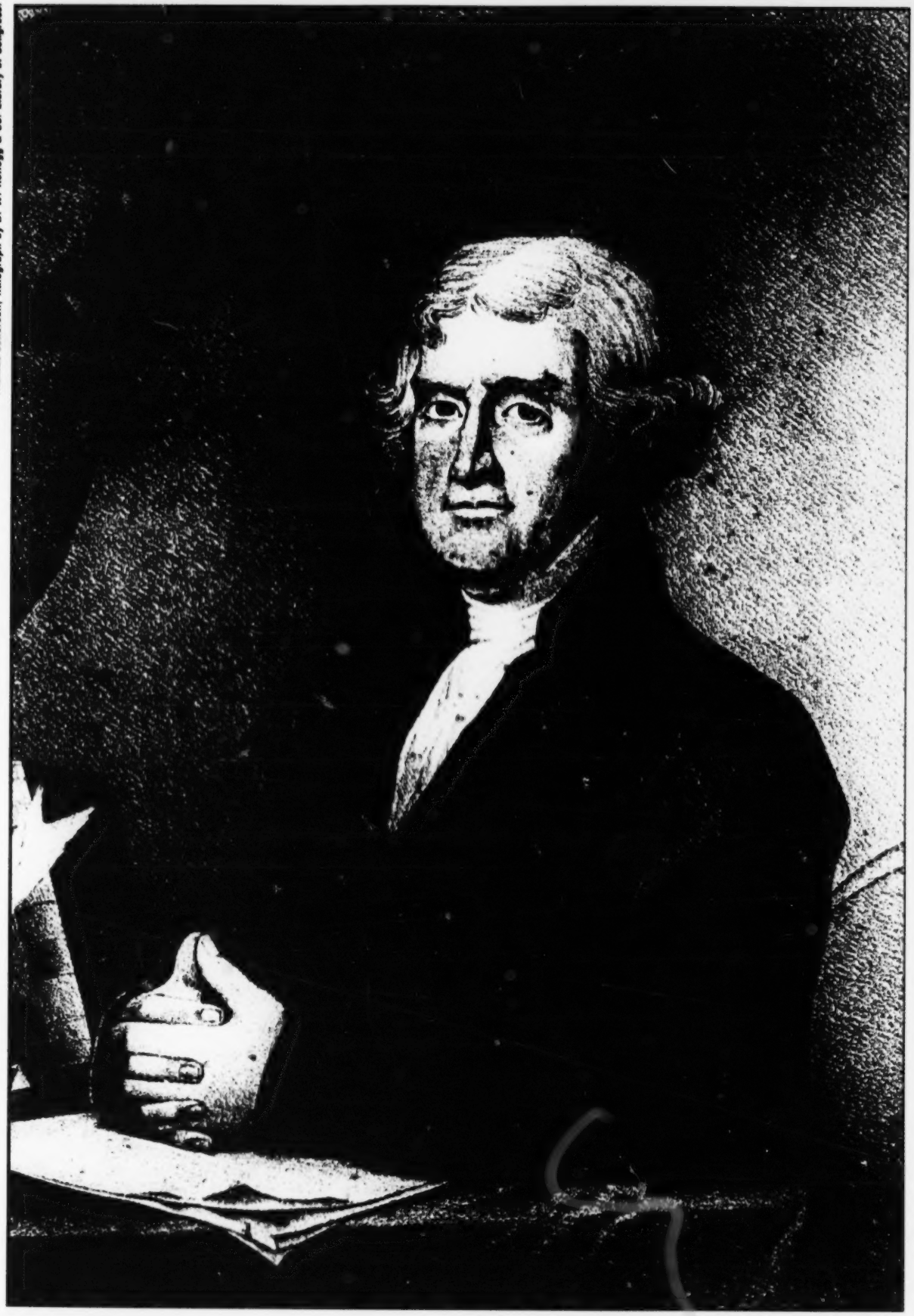
> *Happy for us, that when we find our constitutions defective and insufficient to secure the happiness of our people, we can assemble with all the coolness of philosophers and set it to rights, while every other nation on earth must have recourse to arms to amend or to restore their constitutions.*
>
> **(Julian P. Boyd et al., eds., *Papers of Thomas Jefferson*, vol. 12, p. 113)**

From his position as the United States representative to France, so Jefferson viewed the deliberations back home. Of these, he had great expectations which he shared with his fellow Virginian James Madison, urging him to argue for a central government with sufficient power to deal effectively with national issues. Jefferson had proposed a method of creating an executive branch of government in 1776 while he served in the Continental Congress, "so that Congress itself should meddle only with what should be legislative." He became convinced that the Confederation could be fixed by creating three separate branches of government, and that "to make us one nation as to foreign concerns, and keep us distinct in Domestic ones, gives the outline of the proper division of powers between the general and [state] governments." This judgment led him toward a broad view of what the proposed 1787 convention should do, and he formulated in the process a rather advanced philosophy of judicial review as a counterpoise to Madison's suggestion that Congress be given a veto power over state laws. In fact, Jefferson argued that even the Confederation Congress had inherent powers to govern in areas not expressly provided by the Articles of Confederation. His broad, and mostly centralist, position became settled in his mind by late summer in 1787, the time when the convention was locked in heated debate. Writing to Edward Carrington, a fellow Virginian, on August 4, he remarked:

> *With all the imperfections of our present government, it is without comparison the best existing or that ever did exist. Its greatest defect is the imperfect manner in which matters of commerce have been provided for. It has been so often said, as to be generally believed, that Congress have no power by the confederation to enforce any thing, e.g. contributions of money. It was not necessary to give them that power expressly; they have it by the law of nature. When two nations make a compact, there results to each a power of compelling the other to execute it. Compulsion was never so easy as in our case, where a single frigate would soon levy on the commerce of any state the deficiency of its contributions; nor more safe than in the hands of Congress which has always shewn that it would wait, as it ought to do, to the last extremities before it would execute any of its powers which are disagreeable.*
>
> **(*Papers of Thomas Jefferson*, vol. 11, p. 678–9)**

In Jefferson's mind, viewed from his perspective in royal France, a division of powers would serve the new nation well. It was the difficulty of administering every detail of government that caused the Confederation Congress to lose sight of its duties and responsibilities. Jefferson favored creation of some sort of executive office to correct this problem.

> *I think it very material to separate in the hands of Congress the Executive and Legislative powers, as the Judiciary already are in some degrees. This I hope will be done. The want of it has been the source of more evil than we have ever experienced from any other cause. Nothing is so embarrassing nor so mischievous in a great assembly as the details of execution. The smallest trifle of that kind occupies as long as the most important act of legislation, and takes place of every thing else. Let any man recollect, or look over the*



Thomas Jefferson, lithograph by D. W. Kellogg & Co. Library of Congress.

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files of Congress, he will observe the most important propositions hanging over from week to week and month to month, till the occasions have past them, and the thing never done. I have ever viewed the executive details as the greatest cause of evil to us, because they in fact place us as if we had no federal head, by diverting the attention of that head from great to small objects; and should this division of power not be recommended by the Convention, it is my opinion Congress should make it itself by establishing an Executive committee.

(***Papers of Thomas Jefferson***, **vol. 11, p. 679**)

When he learned of the proposed new constitution, he expressed general approval of the plan, and he especially liked the parts that introduced more direct democratic government. Features providing for the peaceful continuation of government without continual recurrence to the states, the separation of powers, and creation of an executive branch with veto power promised to improve the nation's government. He described his reaction in a long letter to Madison:

I like the power given the Legislature to levy taxes; and for that reason solely approve of the greater house being chosen by the people directly. For tho' I think a house chosen by them will be very illy qualified to legislate for the Union, for foreign nations &c. yet this evil does not weigh against the good of preserving inviolate the fundamental principle that the people are not to be taxed but by representatives chosen immediately by themselves. I am captivated by the compromise of the opposite claims of the great and little states, of the latter to equal, and the former to proportional influence. I am much pleased too with the substitution of the method of voting by persons, instead of that of voting by states: and I like the negative given to the Executive with a third of either house, though I should have liked it better had the Judiciary been associated for that purpose, or invested with a similar and separate power.

(***The Papers of Thomas Jefferson***, **vol. 12, p. 439–40**)

Jefferson continued with an outline of what he did not like, listing first the omission of a bill of rights that would provide "clearly and without the aid of sophisms" for such fundamental freedoms as religion and press, trial by jury, and protection from standing armies and monopolies. "A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference," he added, and on this particular point he never wavered. At first, Jefferson felt so strongly about the need for amendments to protect fundamental rights that he expressed in no uncertain terms his hope that nine states would approve the constitution so that it would be ratified, but that the last four might withhold approval until a bill of rights was added. This would prevent a clear and firm union from coming into being until such a bill was added to the Constitution. Ironically, Jefferson's impractical design for ratification, expressed in a letter to a fellow Virginian, was used by Patrick Henry in the Virginia convention in an attempt to win votes for those opposed to the constitution on other grounds, a ploy strongly challenged by James Madison. Jefferson continued to press for a bill of rights, and he had the pleasure of watching it move rapidly toward adoption when he was Secretary of State in the first administration.

The only other part of the proposed constitution that greatly troubled Jefferson was the re-eligibility of the president. As he explained to George Washington, whom he knew would be elected the first president, Jefferson feared that the office would be given several times by election, then made an office for life, then become hereditary. He wrote:

I was much an enemy to monarchy before I came to Europe. I am ten thousand times more so since I have seen what they are. There is scarcely an evil known in these countries which may not be traced to their king as its source, nor a good which is not derived from the small fibres of republicanism existing among them. I can further say with safety there is not a crowned head in Europe whose talents or merit would enable him to be elected a vestryman by the people of any parish in America. However I shall hope that before there is danger of this change taking place in the office of President, the good sense and free spirit of our countrymen

will make the changes necessary to prevent it. Under this hope I look forward to the general adoption of the new constitution with anxiety, as necessary for us under our present circumstances.

(***Papers of Thomas Jefferson*, vol. 13, p. 128**)

But because of the universal popularity of George Washington, few contemporaries shared Jefferson's apprehensions, and his unceasing belief that the re-election of the president should be limited did not become part of the constitution until 1951 when the Twenty-second Amendment was ratified.

By the spring of 1788, Jefferson had reconciled himself to improving the imperfect Constitution over the coming years rather than during the process of ratification. As he explained to a Frenchman:

I see in this instrument a great deal of good. The consolidation of our government, a just representation, an administration of some permanence and other features of great value, will be gained by it. There are indeed some faults which revolted me a good deal in the first moment: but we must be contented to travel on towards perfection, step by step. We must be contented with the ground which this constitution will gain for us, and hope that a favourable moment will come for correcting what is amiss in it.

(***Papers of Thomas Jefferson*, vol. 13, p. 174**)

And on the eve of establishing the new government, Jefferson viewed the future optimistically:

Our new constitution, of which you speak also, has succeeded beyond what I apprehended it would have done. I did not at first believe that 11 states out of 13 would have consented to a plan consolidating them so much into one. A change in their dispositions which had taken place since I left them, had rendered this consolidation necessary, that is to say, had called for a federal government which could walk upon its own legs, without leaning for support on the state legislatures. A sense of this necessity, and a submission to it, is to me a new and consolatory proof that wherever the people are well informed they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.

(***Papers of Thomas Jefferson*, vol. 14, p. 420**)

Jefferson's philosophy remained as he expressed it to George Mason, a Virginia delegate to the Constitutional Convention who refused to sign the document, not long after becoming Secretary of State: "In general I think it necessary to give as well as take in a government like ours." He was to have many chances to practice that philosophy as the new government moved forward and he found himself at odds with the strong Secretary of the Treasury, Alexander Hamilton, whose view of republicanism differed considerably from his own. Their debate and opposing philosophies over the creation of the national bank are classic statements of strict and loose interpretations of federal powers as outlined in the Constitution. Jefferson argued that the Constitution said nothing about a bank, and that the government could not therefore create one. But his position was not so simple on the matter of constitutional interpretation. Jefferson above all other founding fathers was comfortable with change throughout his long life, and to isolate his opinions in a few statements made during the first decade of the nation's history leads to a contorted understanding of his philosophy in general.

Some of the strict constructionist views he expressed during the 1790s stemmed from what Jefferson thought to be monarchists' attempts to centralize power in the executive branch and in the Senate, steps he believed to be confirmed by adoption of the Alien and Sedition Acts. Enforcement of those acts threatened the liberties of all Americans by restricting speech and freedom of expression, and Jefferson had denounced them most strongly in his Kentucky Resolution of 1798. Concerned that the threat of war with European powers was being used by the Federalists to concentrate power in a few hands, Jefferson wrote a remarkable statement of his political principles in which he stated—perhaps overstated in some instances—his fundamental commitment to the Constitution and republican government. In a 1799 letter to Elbridge Gerry, another delegate to the Constitutional Convention who refused to sign, he said:

I . . . wish an inviolable preservation of our present federal constitution, according to the true sense in which it was adopted by the States, that in which it was advocated by its friends, and not that

The University of Virginia, engraving by Benjamin Tanner, 1826. Library of Congress.

which its enemies apprehended, who therefore became its enemies; and I am opposed to the monarchising its features by the forms of its administration, with a view to conciliate a first transition to a President and Senate for life, and from that to a hereditary tenure of these offices, and thus to worm out the elective principle. I am for preserving to the States the powers not yielded by them to the Union, and to the legislature of the Union its constitutional share in the division of powers; and I am not for transferring all the powers of the States to the general government, and all those of that government to the Executive branch.

(Paul Leicester Ford, *The Writings of Thomas Jefferson* (1896), VII, 327)

He feared a trend toward the abuses of power as he outlined them in this letter, and the climate of partisan strife during the late 1790s discouraged him. Typically, Jefferson turned toward philosophical principles that he had advocated since the birth of the nation, and he applied them to acts of government with which he had disapproved since adoption of the Constitution. He had opposed a standing army all along and detested Hamilton's use of a national debt to strengthen federal authority. In the months after debate over the Kentucky and Virginia Resolutions, Jefferson became expansive in his expression of opinion regarding the Constitution as he continued his letter to Gerry:

I am for a government rigorously frugal and simple, applying all the possible savings of the public revenue to the discharge of the national debt; and not for a multiplication of officers and salaries merely to make partisans, and for increasing, by every device, the public debt, on the principle of its being a public blessing. I am for relying, for internal defence, on our militia solely, till actual invasion, and for such a naval force only as may protect our coasts and harbors from such depredations as we have experienced; and not for a standing army in time of peace, which may overawe the public sentiment; nor for a navy, which, by its own expenses and the eternal wars in which it will implicate us, will grind us with public burthens, and sink us under them. I am for free commerce with all nations; political connection with none; and little or no diplomatic establishment. And I am not for linking ourselves by new treaties with the quarrels of Europe; entering that field of slaughter to preserve their balance, or joining in the confederacy of

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kings to war against the principles of liberty. I am for freedom of religion, and against maneuvres to bring about a legal ascendancy of one sect over another: for freedom of the press, and against all violations of the constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents. And I am for encouraging the progress of science in all its branches; and not for raising a hue and cry against the sacred name of philosophy; for awing the human mind by stories of raw-head and bloody bones to a distrust of its own vision, and to repose implicitly on that of others; to go backwards instead of forwards to look for improvement; to believe that government, religion, morality, and every other science were in the highest perfection in ages of the darkest ignorance, and that nothing can ever be devised more perfect than what was established by our forefathers.

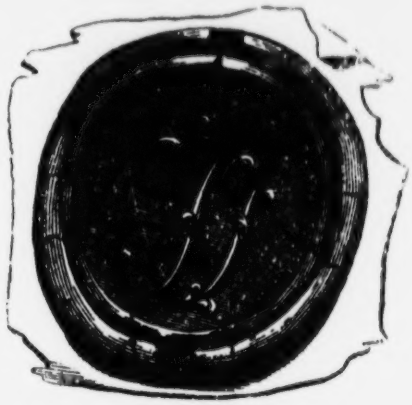
(Ford, *The Writings of Thomas Jefferson*, VII, 327–9)

This statement was written during a time when Jefferson feared for the survival of the union, but in it one sees clearly his belief that it must be preserved by recourse to the power of the people scattered over the land, in whom he had consummate faith. Jefferson was prepared to repose fully his faith in the people, contrasting them with the commercial, monied interests collected into the cities of the eastern seaboard. By 1820 he believed those latter groups had finally abandoned the hope of producing a monarchy in this country, but they had turned their energies toward consolidating all power in the national government. This he found disturbing.

While he continued to express his belief in the separation of powers and the system of checks and balances, he refused to appeal to the public when some thought these principles were under attack. As he explained to Spencer Roane, A Virginia judge, in 1819:

I withdraw from all contests of opinion, and resign everything cheerfully to the generation now in place. They are wiser than we were, and their successors will be wiser than they, from the progressive advance of science. Tranquillity is the summum bonum *of age. I wish, therefore, to offend no man's opinion, nor to draw disquieting animadversions on my own. While duty required it, I met opposition with a firm and fearless step. But loving mankind in my individual relations with them, I pray to be permitted to depart in their peace; and like the superannuated soldier, 'quadragenis stipendiis emeritis,' to hang my arms on the post.*

(Ford, *The Writings of Thomas Jefferson*, X, 142–3)



Jefferson's seal, with the inscription, "Rebellion to tyrants is obedience to God." Library of Congress.

His faith in improvement found its constitutional home in the amending system adopted as part of the Constitution. He argued that "the real friends of the constitution in its federal form, if they wish it to be immortal, should be attentive, by amendments, to make it keep pace with the advance of the age in science and experience." This process would allow peaceful change and demonstrate how our superior system of government moved forward without the revolution or force that still characterized European governments.

Jefferson believed in a strict construction of the Constitution, to be sure, but his support for the governmental system designed in 1787 was always firm, sustained by his faith in the democratic process. His advocacy of "a little revolution" periodically—perhaps in each generation—must be viewed alongside his dedication to the amending process to bring about peaceful change, and his fear that a second constitutional convention would be unwise. A study of Jefferson's constitutional thought reveals most clearly the characteristic of his great mind often overlooked: his opinion was never fixed in any one position to remain unchanging forever. Moreover, his evolving philosophy throughout his long life was quite positive and optimistic. These are characteristics one should expect in the foremost spokesman for democracy in the modern world, and our constitutional system is stronger because of them.

Charles T. Cullen is president and librarian of the Newberry Library in Chicago; he was until recently editor of *The Papers of Thomas Jefferson*.

VIII
Teaching Plan for Lesson 8
Thomas Jefferson's Response to the Constitution of 1787

Objectives

Students are expected to

1) identify and explain Thomas Jefferson's positive responses to the 1787 Constitution;

2) identify and explain Thomas Jefferson's two major objections to the 1787 Constitution;

3) take a position for or against Thomas Jefferson's two major objections to the 1787 Constitution;

4) interpret and apply to classroom discussions information and ideas in letters from Jefferson to James Madison, George Washington, and Francis Hopkinson;

5) use information in primary documents to write a brief essay about the political ideas of Thomas Jefferson.

Preparing to Teach the Lesson

Read the essay by Charles T. Cullen, "Thomas Jefferson: Writings on the Constitution." Pay special attention to Cullen's discussion of Jefferson's letters about the 1787 Constitution to James Madison (December 20, 1787) and George Washington (May 2, 1788). Read Lesson 8, "Thomas Jefferson's Response to the Constitution of 1787." Pay special attention to the documents emphasized in this Lesson—the letters from Jefferson to Madison, Washington, and Hopkinson.

Plan to spend at least two class periods on this Lesson.

Opening the Lesson

Write the name Thomas Jefferson on the chalkboard. Ask students to list his major accomplishments in the founding of the United States of America. Make a list of student responses. During this discussion, point out that Jefferson was in France during the Federal Convention at Philadelphia.

Ask students to tell what they know about Jefferson's appraisal of the Constitution during the period 1787–1788, when it was debated and approved in state ratifying conventions. After a brief speculative discussion, tell students that the main point of this Lesson is to examine four documents that reveal Jefferson's ideas about the strengths and weaknesses of the 1787 Constitution.

Developing the Lesson

Ask students to read the first part of the Lesson, including Jefferson's December 20, 1787 letter to James Madison and his 1788 letter to George Washington. Ask students to answer the four questions that follow this document.

Assign the remainder of the Lesson, which includes letters about the 1787 Constitution from Jefferson to Francis Hopkinson and from Jefferson to James Madison. Ask students to respond to the two questions that follow these letters.

Require students to respond to item 1 at the end of the Lesson, which pertains to the four primary documents in this Lesson. Answers to item 1 are presented below:

a. No, Documents I and III.
b. Yes, Documents I and III.
c. No, Documents I, II, III, IV.
d. No, Document III.
e. Yes, Documents I, II, III, IV.
f. Yes, Documents I, II, III, IV.
g. No, Document III.
h. Uncertain.
i. Yes, Documents I and III.
j. Yes, Document I.

Require students to support answers to item 1 with specific references to pertinent parts of the documents in this lesson. The purpose of this activity is to require students to use evidence from primary sources to justify answers about political ideas.

Concluding the Lesson

Conduct a concluding class discussion about items 2 and 3 at the end of the Lesson. These items pertain to Jefferson's two major objections to the 1787 Constitution: (1) the omission of a Bill of Rights, and (2) the lack of limits to the number of times that a person could be elected to the office of the President.

Ask students to explain and justify Jefferson's argument for a Bill of Rights in the U.S. Constitution.

Next, ask students to take sides, pro or con, in response to the 22nd Amendment to the Constitution, which satisfies Jefferson's second major objection to the Constitution of 1787.

Conclude this Lesson with an essay writing assignment, which is described in item 4 at the end of the Lesson. After students have written their essays, call upon a few students to make 5-minute presentations to the class on the ideas in their essays. Ask other students to listen carefully and to raise questions or make comments about the presentations.

VIII
Lesson 8
Thomas Jefferson's Response to the Constitution of 1787

Thomas Jefferson was the United States Minister to France during the summer of 1787, when the Federal Convention met in Philadelphia. He certainly would have been selected to represent Virginia at the Convention, if he had been in the United States. No American was a stronger and more effective advocate of self-government and human rights than this author of the Declaration of Independence. His advocacy of constitutional reform, however, had to be carried out through letters to his friends and political allies in Virginia and other parts of the United States.

The Federal Convention concluded its work on September 17, 1787, when 39 delegates from 12 states signed the new Constitution of the United States of America. The Congress of the Confederation resolved on September 28 to send this Constitution to the states for ratification. Jefferson, however, did not receive a copy of the 1787 Constitution until the second week in November, and his first reaction was that "there are very good articles in it: and very bad. I do not know which preponderate" (letter to William S. Smith, November 13, 1787).

Jefferson's Letters to Madison and Washington

After this initial outburst, Jefferson took time to examine and reflect upon the Constitution of 1787. He wrote a careful response to the new frame of government to his friend and regular correspondent, James Madison. In a letter to Jefferson (October 24, 1787), Madison had informed him about the deliberations at the Federal Convention and provided reasons for support of the 1787 Constitution. In his reply to Madison (December 20, 1787), Jefferson discussed his views about the strengths and weaknesses of the new Constitution.

Thomas Jefferson to James Madison
December 20, 1787

. . . I will [write] a few words on the Constitution proposed by our Convention. I like much the general idea of framing a [federal] government which should go on of itself [independently] without needing continued [approval from] the state legislatures [the governments of the thirteen states of the Federal Union, as under the Articles of Confederation]. I like the organization of the government into Legislative, Judiciary and Executive. I like the power given the Legislature to levy taxes; and for that reason solely approve of the greater house [House of Representatives] being chosen by the people directly. . . . [The] people are not to be taxed but by representatives chosen immediately by themselves. I am captivated by the compromise of the opposite claims of the great and little states, of the latter to equal and the former to proportional influence. [This refers to the Great Compromise whereby each state has two representatives in the Senate and representation of states varies with population in the House of Representatives.] I am much pleased too with the substitution of the method of voting [in the Senate and House of Representatives] by persons, instead of that of voting by states [as under the Articles of Confederation]: and I like the negative [veto power] given to the Executive [the President] with a third of either house [it takes a vote of 2/3 of both Houses of Congress to overcome a President's veto of an act passed initially by a simple majority]. . . . There are other good things of less moment. I will now add what I do not like. First the omission of a bill of rights providing clearly . . . for freedom of religion, freedom of the press, protection against standing armies [and so forth]. . . .

. . . Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference. The second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the constitution permits it. He is then an officer for life. . . .

. . . An incapacity to be elected a second time would have been the only effective preventative. . . . After all, it is my principle that the will of the Majority should always prevail. If they approve the proposed Convention in all its parts, I shall concur in it chearfully, in hopes that they will amend it whenever they shall find it work wrong. . . . I hope that the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty. . . .

From December 1787 through April of 1788, the ratifying conventions of seven states met and approved the 1787 Constitution. Jefferson, in France, continued to receive information about the ratifying conventions in letters from America. And he continued to communicate his ideas on the 1787 Constitution to his friends in America. He wrote in a letter to George Washington his criticisms of the executive branch of government in the 1787 Constitution.

Thomas Jefferson to George Washington
May 2, 1788

. . . I will just observe . . . that according to my ideas there is a great deal of good in it [the Constitution of 1787]. There are two things however which I dislike strongly. 1. The want of a declaration of rights [Bill of Rights]. I am in hopes the opposition of Virginia will remedy this, and produce such a declaration. 2. The perpetual re-eligibility of the President. This I fear will make that an office for life first, and then hereditary. I was much an enemy to monarchy before I came to Europe. I am ten

thousand times more so since I have seen what they are. There is scarcely an evil known in these countries which may not be traced to their king as its source, nor a good which is not derived from the small fibres of republicanism existing among them. I can further say with safety there is not a crowned head in Europe whose talents or merit would enable him to be elected a vestryman by the people of any parish in America. However I shall hope that before there is danger of this change taking place in the office of President, the good sense and free spirit of our countrymen will make the changes necessary to prevent it. Under this hope I look forward to the general adoption of the new constitution with anxiety, as necessary for us under our present circumstances. . . .

Answer these questions about Jefferson's letters to Madison and Washington. Use information and examples in the two documents to support or justify your answers.

1. What did Jefferson like about the Constitution of 1787?
2. What did Jefferson dislike about the Constitution?
3. What reasons did Jefferson have for the things that he disliked in the Constitution?
4. In general, was Jefferson's response to the Constitution positive or negative? Explain.

Jefferson's Opinions about the Establishment of a New Constitutional Government

By the end of July, 11 states had ratified the 1787 Constitution, including Jefferson's state of Virginia. Jefferson expressed his approval in a letter to James Madison (July 31, 1788): "I sincerely rejoice at the acceptance of our new constitution. . . . It is a good canvas, on which some strokes only want retouching." Six of the 11 ratifying conventions, including the Virginia Convention, had proposed amendments to the 1787 Constitution that would, if enacted, protect the rights and liberties of individuals against the power of the federal government. Jefferson strongly approved this development and hoped that it would lead to certain changes in the Constitution, which he wanted, such as a bill of rights.

In March of 1789, the first Congress under the new Constitution gathered in New York City, the temporary capital of the United States. Preparations were made for the arrival of George Washington, who would take office on April 30 as the first President under the new Constitution. Jefferson wrote about the establishment of government under the 1787 Constitution (letter to Francis Hopkinson, March 13, 1789).

Thomas Jefferson to Francis Hopkinson
March 13, 1789

. . . I am not of the party of federalists. But I am much farther from that of the Antifederalists. I approved from the first moment, of the great mass of what is in the new constitution, the consolidation of the government, the organisation into Executive, legislative and judiciary, the subdivision of the legislative, the happy compromise of interests between the great and little states by the different manner of voting in the different houses, the voting by persons instead of states, the qualified negative on laws given to the Executive . . .and the power of taxation. . . . What I disapproved from the first moment also was the want of a bill of rights to guard liberty against the legislative as well as executive branches of the government, that is to say to secure freedom in religion, freedom of the press, freedom from monopolies, freedom from unlawful imprisonment, freedom from a permanent military, and a trial by jury in all cases determinable by the laws of the land. I disapproved also the perpetual re-eligibilty of the President. To these points of disapprobation I adhere. . . . With respect to the declaration of rights I suppose the majority of the United States are of my opinion: for I apprehend all the antifederalists, and a very respectable proportion of the federalists think that such a declaration should now be annexed. . . . With respect to the re-eligibility of the president, I find myself differing from the majority of my countrymen, for I think there are but three states of the 11 which have desired an alteration of this. And indeed, since the thing is established, I would wish it not to be altered during the life of our great leader [George Washington], whose executive talents are superior to those I believe of any man in the world, and who alone by the authority of his name and the confidence reposed in his perfect integrity, is fully qualified to put the new government so under way as to secure it against the efforts of opposition. But having derived from our error all the good there was in it I hope we shall correct it [by constitutional amendment] the moment we can no longer have the same person at the helm. These, my dear friend, are my sentiments. . . .

A few days later, Jefferson wrote again to James Madison. He offered these concluding remarks about the new Constitution and the government that was being created in terms of it. He also discussed the addition of a bill of rights to the Constitution. He responded to four ideas expressed by Madison (letter of October 17, 1788) about why a bill of rights was not needed in the U.S. Constitution. Jefferson expressed his delight about Madison's inclination to support the addition of a bill of rights in the U.S. Constitution.

Thomas Jefferson to James Madison
March 15, 1789

. . . I am happy to find that on the whole you are a friend to this amendment [bill of rights]. The Declaration of rights is like all other human blessings alloyed with some inconveniences, and not accomplishing fully its object. But the good in this instance vastly overweighs the evil. I cannot refrain from making short answers to the objections which your letter states to have been raised. 1. That the rights in question are reserved by the manner in which the federal powers are granted. Answer. A constitutive act may certainly be so formed as to need no declaration of rights. The act itself has the force of a declaration as far as it goes: and if it goes to all material points nothing more is wanting. . . . But in a constitutive act which leaves some precious articles unnoticed, and raises implications against others, a declaration of rights becomes necessary by way of supplement. This is the case of our new federal constitution. This instrument forms us into one state as to certain objects, and gives us a legislative and executive body for these objects. It should therefore guard us against their abuses of power within the field submitted to them. 2. A positive declaration of some essential rights could not be obtained in the requisite latitude. Answer. Half a loaf is better than no bread. If we cannot secure all our rights, let us secure what we can. 3. The limited powers of the federal government and jealousy of the subordinate governments afford a security which exists in no other instance. Answer. The first member of this seems resolvable into the 1st. objection before stated. The jealousy of the subordinate governments is a pre-

cious reliance. But observe that those governments are only agents. They must have principles furnished them whereon to found their opposition. The declaration of rights will be the text whereby they will try all the acts of the federal government. In this view it is necessary to the federal government also: as by the same text they may try the opposition of the subordinate governments. 4. Experience proves the inefficacy of a bill of rights. True. But tho it is not absolutely efficacious under all circumstances, it is of great potency always, and rarely inefficacious. A brace the more will often keep up the building which would have fallen with that brace the less. There is a remarkable difference between the characters of the Inconveniencies which attend a Declaration of rights, and those which attend the want of it. The inconveniences of the Declaration are that it may cramp government in its useful exertions. But the evil of this is shortlived, moderate, and reparable. The inconveniencies of the want of a Declaration are permanent, afflicting and irreparable: They are in constant progression from bad to worse. The executive in our governments is not the sole, it is scarcely the principal object of my jealousy. The tyranny of the legislatures is the most formidable dread at present, and will be for long years. That of the executive will come in its turn, but it will be at a remote period. I know there are some among us who would now establish a monarchy. But they are inconsiderable in number and weight of character. The rising race are all republicans. We were educated in royalism: no wonder if some of us retain that idolatry still. Our young people are educated in republicanism. An apostacy from that to royalism is unprecedented and impossible. I am much pleased with the prospect that a declaration of rights will be added: and hope it will be done in that way which will not endanger the whole frame of the government, or any essential part of it. . . .

Answer these questions about Jefferson's 1789 letters to Francis Hopkinson and James Madison. Use information and examples in the documents to support or justify your answers.

1. What are two ideas about constitutional rights that Jefferson expresses in his letter to Hopkinson and in his letter to Madison?*

2. What are Jefferson's ideas about how a bill of rights in the U.S. Constitution could protect individuals against tyranny?

Jefferson was very pleased when in the summer of 1789 the First Federal Congress proposed amendments to the Constitution that constituted a Bill of Rights for the American people. His friend, James Madison, took the lead in proposing and influencing action in Congress to advance these amendments on civil liberties and rights. (Madison had been elected to represent his district of Virginia in the House of Representatives.)

Jefferson was satisfied that his letters from France could have had some influence on Madison and the movement to add a bill of rights to the Constitution. This finally happened on December 15, 1791, when Virginia ratified 10 of 12 proposed amendments to the Constitution. Thus, the required three-fourths of the states had approved these amendments, and they became part of the U.S. Constitution. We call Amendments I-X the Bill of Rights.

Jefferson's other major concern about the 1787 Constitution, the lack of limits on the number of terms a person could have in the office of President, was not resolved until passage of the 22nd Amendment in 1951. This says: "No person shall be elected to the office of the President more than twice. . . ." The passage of this amendment was a direct response to the election of Franklin D. Roosevelt to four terms as President. Before Roosevelt's time, no President had tried to contravene the traditional limit of two four-year terms in office.

Comprehending and Interpreting Documents

1. Read the following statements and decide whether or not each statement is a correct description or interpretation of the contents of one or more of four documents: (1) Letter from Thomas Jefferson to James Madison, December 20, 1787; (2) Letter from Thomas Jefferson to George Washington, May 2, 1788; (3) Letter from Thomas Jefferson to Francis Hopkinson, March 13, 1789, and (4) a letter from Thomas Jefferson to James Madison, March 15, 1789. If a statement below is correct, answer YES. If it is incorrect, answer NO. Identify the document(s) that include evidence to support each answer. Use these Roman numerals to identify the documents: "I" for the 1787 letter to James Madison, "II" for the letter to George Washington, "III" for the letter to Francis Hopkinson, and "IV" for the 1789 letter to James Madison. If a statement cannot be judged correct or incorrect, based on evidence in one of the four documents, then answer UNCERTAIN. Use the contents of the four documents to explain or justify your responses to the items below.

a. Jefferson was opposed to the power to tax in the 1787 Constitution.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

b. Jefferson approved the President's power to veto acts of Congress.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

c. Jefferson wanted the President to have an unlimited term of office.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

d. Jefferson was worried that George Washington wanted to become a monarch.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

e. Jefferson hoped that amendments would be made to the 1787 Constitution.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

f. In general, Jefferson approved of the 1787 Constitution.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

g. Jefferson said that he favored the Anti-Federalists side in the debate about ratification of the Constitution.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

h. Jefferson approved the power of Congress to regulate commerce in the 1787 Constitution.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

i. Jefferson approved the separation of powers among three branches of government.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

j. Jefferson supported majority rule, even if the majority voted against his favorite ideas.
YES ___ NO ___ UNCERTAIN ___ DOCUMENT ___

2. In a letter to James Madison (December 20, 1787), Thomas Jef-

ferson wrote: "... [A] bill of rights is what the people are entitled to against every government on earth ... and what no just government should refuse, or rest on inference." Why did Jefferson write this statement? Do you agree with it? Why?

3. The 22nd Amendment to the U.S. Constitution says: "No person shall be elected to the office of the President more than twice...." Does this Amendment agree with the ideas of Thomas Jefferson, expressed in his letters of 1787–1789? Do you agree with the 22nd Amendment? Should it be maintained or repealed? Why?

4. Select *one* of the following questions: question "a" or question "b". Write a brief essay (no more than 500 words) in response to *the question* that you select. Use the four primary documents in this lesson as sources of information for your essay. You are required to support all conclusions in your essay with evidence from these four primary sources.

a. Was Jefferson primarily a supporter or opponent of the Constitution of 1787? Explain.

b. Did Jefferson believe that protecting the rights of individuals should be the primary end or purpose of a constitutional government? Explain.

PART IX

Introduction

Women and the Constitution, 1787–1876

Teaching Plan for Lesson 9

Lesson 9: Abigail Adams on the Constitutional Rights of Women

IX
Introduction

In the United States today, many would say that women have made enormous advances in social, economic, and political life. Increasingly, women in America have earned advanced degrees in such professions as dentistry, law, medicine, and business administration, in addition to the "traditional" women-dominated areas such as nursing, teaching, clerical and secretarial fields, and retail sales.

If she were alive today, Abigail Adams, wife of second U.S. President John Adams, might shout "Hallelujah!" at the progress made since her time. She undoubtedly would be pleased to know that letters she wrote to her husband about the civil rights of women are still remembered and quoted. As John Adams and others in the Continental Congress were deliberating about individual liberties and national independence, she implored her husband to "Remember the Ladies"—their civil rights and liberties and claims to equal justice under the law. According to her biographer Phyllis Lee Levin, Abigail Adams in her March 31, 1776 letter to John Adams, "had launched, unwittingly, the timeless campaign for women's rights."

From the time of Abigail Adams until the second half of the twentieth century, this campaign for constitutional rights was very slow and arduous. Only in our time have many of the barriers to equal legal rights for women fallen; the campaign for full rights for women under the Constitution continues to this day.

During the founding period of United States history, political leaders were concerned primarily with the rights of white males. According to Linda K. Kerber, an expert on women in American history, "Americans continued to discuss political affairs in terms that largely excluded women. . . ." Professor Kerber asserts: [W]omen remained on the periphery of the political community; it is possible to read the subsequent political history of women in America as the story of women's efforts to accomplish for themselves what the Revolution had failed to do" (*Women of the Republic*, 1980, 12).

Part IX includes an essay by Linda K. Kerber, Professor of History at the University of Iowa, entitled " 'Ourselves and Our Daughters Forever': Women and the Constitution, 1787–1876." Kerber enlightens us about the status and role of women from colonial times to the early years of our nation following the writing and ratification of the U.S. Constitution in the 1780s. She highlights correspondence about the legal rights of women between Abigail Adams and her husband John Adams.

Professor Kerber also discusses other documents and events in the long and difficult struggle for women's rights under the Constitution. She traces several state laws and important court cases involving the legal struggle that occurred in the march for equality.

Linda Kerber's essay is followed by a Teaching Plan and Lesson for high school students: "Abigail Adams on the Constitutional Rights of Women." The Teaching Plan and Lesson provide materials for high school history and government courses about the letters of Abigail Adams that mark symbolically the beginning of the continuing struggle for women's constitutional rights in our American society.

DOCUMENTS

"Ourselves and Our Daughters Forever": Women and the Constitution, 1787–1876

by LINDA K. KERBER

In 1876, the United States celebrated one hundred years as an independent nation dedicated to the proposition that all men are created equal. The capstone of the celebration was a public reading of the Declaration of Independence in Independence Square, Philadelphia, by a descendant of a signer, Richard Henry Lee.

Elizabeth Cady Stanton, who was then president of the National Woman Suffrage Association, asked permission to present silently a women's protest and a written women's Declaration of Rights. Her request was denied. "Tomorrow we propose to celebrate what we have done the last hundred years," replied the president of the official ceremonies, "not what we have failed to do."

Led by Susan B. Anthony, five women appeared nevertheless at the official reading, distributing copies of their own Declaration. After this mildly disruptive gesture, they withdrew to the other side of the symmetrical Independence Hall, where they staged a counter-Centennial. "With sorrow we come to strike the one discordant note, on this one-hundredth anniversary of our country's birth," Susan B. Anthony declared.

Although the rhythms of her speech echoed the Declaration of Independence, as was fitting for the day—"The history of our country the past hundred years has been a series of assumptions and usurpations of power over woman . . ."—the substance of her speech was built on references to the Constitution. Anthony and the women for whom she spoke were troubled by the discrepancy between the universally applicable provisions of the Constitution and the specificity of the way in which these provisions were interpreted to exclude women. For example, since all juries excluded women, women were denied the right of trial by a jury of their peers. Although taxation without representation had been a rallying cry of the Revolution, single women and widows who owned property paid taxes although they could not vote for the legislators who set the taxes. A double standard of morals was maintained in law, by which women were arrested for prostitution while men went free. The introduction of the word "male" into federal and state constitutions, Anthony asserted, functioned in effect as a bill of attainder, in that it treated women as a class, denying them the right of suffrage, and "thereby making sex a crime."

Anthony ended by calling for the impeachment of all officers of the federal government on the grounds that they had not fulfilled their obligations under the Constitution. Their "vacillating interpretations of constitutional law unsettle our faith in judicial authority, and undermine the liberties of the whole people," she declared.

> *Special legislation for woman has placed us in a most anamalous position. Women invested with the rights of citizens in one section—voters, jurors, office-holders—crossing an imaginary line, are subjects in the next. In some States, a married woman may hold property and transact business in her own name; in others her earnings belong to her husband. In some States, a woman may testify against her husband, sue and be sued in the courts; in others, she has no redress in case of damage to person, property, or character. In case of divorce on account of adultery in the husband, the innocent wife is held to possess no right to children or property, unless by special decrees of the court . . . In some States women may enter the law schools and practice in the courts; in others they are forbidden. . . .*
>
> *These articles of impeachment against our rulers we now submit to the impartial judgment of the people . . . From the beginning of the century, when Abigail Adams, the wife of one president and mother of another, said, "We will not hold ourselves bound to obey laws in which we have no voice or representation," until now, woman's discontent has been steadily increasing, culminating nearly thirty years ago in a simultaneous movement among the women of the nation, demanding the right of suffrage. . . . It was the boast of the founders of the republic, that the rights for which they contended were the rights of human nature. If these rights are ignored in the case of one-half the people, the nation is surely preparing for its downfall. Governments try themselves. The recognition of a governing and a governed class is incompatible with the first principles of freedom. . . .*
>
> **"Declaration of Rights"**
> ***History of Woman Suffrage*, III, pp. 31–34**

Division of Political History, Smithsonian Institution, Washington, D.C.

Let us stand with Susan B. Anthony at her vantage point of 1876 and review the constitutional issues that touched women's lives in the first hundred years of the republic. During those hundred years, basic questions were defined and strategies for affecting legislation were developed. Not until the century following the Centennial would women direct their energies to constitutional amendment. In the first century, the challenge was to understand whether and to what extent women's political status was different from that of men, and to develop a rationale for criticizing that difference.

It is intriguing to speculate how the Founders might have responded to Anthony's challenge. Throughout the long summer of 1787 in Philadelphia, the role of women in the new polity went formally unconsidered. Whether they came from small or big states, whether they favored the New Jersey or Virginia Plan, whether they hoped for a gradual end to slavery or a strengthening of the system, the men who came to Independence Hall in 1787 shared assumptions about women and politics so fully that they did not need to debate them. Indeed, John Adams had missed the point in his now-famous exchange with Abigail Adams to which Anthony referred in her Centennial Address: Abigail Adams had clearly had domestic violence as well as political representation in mind as she wrote; that is, she was thinking in both practical and theoretical terms. Her husband refused to deal with the issue:

Abigail Adams to John Adams
March 31, 1776

. . . in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Laidies we are determined to foment a Rebelion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute . . . . Why then, not put it out of the power of the vicious and the Lawless to use us with cruelty and indignity with impunity. . . ."

John Adams to Abigail Adams
April 14, 1776

As to your extraordinary Code of Laws, I cannot but laugh. We have been told that our Struggle has loosened the bands of Government every where. That Children and Apprentices were disobedient—that schools and Colledges were grown turbulent—that Indians slighted their Guardians and Negroes grew insolent to their Masters. But your Letter was the first Intimation that another Tribe more numerous and powerfull than all the rest were grown discontented. . . . Depend upon it, We know better than to repeal our Masculine systems. . . . We have only the Name of Masters, and rather than give up this, which would compleatly subject Us to the Despotism of the Peticoat, I hope General Washington, and all our brave Heroes would fight. . . .

Abigail Adams to John Adams
May 7, 1776

. . . Arbitrary power is like most other things which are very hard, very liable to be broken . . . ."

The exclusion of married women from the vote was based on the same principle that excluded men without property from the vote. If the will of the people was in fact to be expressed by voting, it was important that each vote be independent and uncoerced. But men who had no property and were dependent on their landlords or employers for survival were understood to be vulnerable to pressure; they were, in John Adams' words, "too

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dependent upon other men to have a will of their own." Adams acknowledged, in fact, that excluding all women was somewhat arbitrary; but lines, as he explained in a thoughtful letter to the Massachusetts politician James Sullivan, had to be drawn somewhere.

John Adams to James Sullivan
May 26, 1776

It is certain, in theory, that the only moral foundation of government is, the consent of the people. But to what an extent shall we carry this principle? Shall we say that every individual of the community, old and young, male and female, as well as rich and poor, must consent, expressly, to every act of legislation? No, you will say, this is impossible. How, then, does the right arise in the majority to govern the minority, against their will? Whence arises the right of the men to govern the women, without their consent? Whence the right of the old to bind the young, without theirs? . . .

But why exclude women?

You will say, because their delicacy renders them unfit for practice and experience in the great businesses of life, and the hardy enterprises of war . . . . Besides, their attention is so much engaged with the necessary nurture of their children, that nature has made them fittest for domestic cares. And children have not judgment or will of their own. True. But will not these reasons apply to others? It is not equally true, that men in general, in every society, who are wholly destitute of property, are also too little acquainted with public affairs to form a right judgment, and too dependent upon other men to have a will of their own? . . . They talk and vote as they are directed by some man of property. . . .

Your idea that those laws which affect the lives and personal liberty of all, or which inflict corporal punishment, affect those who are not qualified to vote, as well as those who are, is just. But so they do women, as well as men; children, as well as adults. What reason should there be for excluding a man of twenty years eleven months and twenty-seven days old, from a vote, when you admit one who is twenty-one? The reason is, you must fix upon some period in life, when the understanding and will of men in general, is fit to be trusted by the public. Will not the same reason justify the state in fixing upon some certain quantity of property, as a qualification?

The same reasoning which will induce you to admit all men who have not property, to vote, with those who have, for those laws which affect the person, will prove that you ought to admit women and children; for, generally speaking, women and children have as good judgments, and as independent minds, as those men who are wholly destitute of property; these last being to all intents and purposes as much dependent upon others, who will please to feed, clothe and employ them, as women are upon their husbands, or children on their parents . . .

Depend upon it, Sire, it is dangerous to open so fruitful a source of controversy and altercation as would be opened by attempting to alter the qualifications of voters; there will be no end of it. New claims will arise; women will demand a vote; lads from twelve to twenty-one will think their rights not enough attended to; and every man who has not a farthing, will demand an equal voice with any other, in all acts of state. It tends to confound and destroy all distinctions, and prostrate all ranks to one common level . . .

John Adams spelled out with unusual frankness what most of his colleagues believed. If dependent men were to vote, the result would not be that the will of all individuals was counted; rather the result would be that landlords and employers would in effect exercise multiple votes. Married women were thought to be in much the same state as unpropertied men. Their property, according to the ancient tradition of British law, came into their husbands' power when they married, a practice known as *coverture*. The married woman, "covered" by her husband's civic identity, lost the power to manipulate her property independently. (She remained, however, an independent *moral* being under the law, capable of committing crimes, even treason.) To give a vote to a person so dependent

Women voting in eighteenth-century New Jersey. *Library of Congress.*

on another's will seemed to give a double vote to husbands, rather than to enfranchise wives. In a society in which it was assumed that the wife did the husband's bidding, it seemed absurd to give married men a political advantage over their unmarried brothers. Therefore virtually all the states denied the franchise to married women as well as to men without property.

The logic that excluded married women should not have, on the face of it, excluded unmarried women with property—including widows—who were not under the immediate influence of an adult man and who could buy and sell their property and who paid taxes. Single adult women might have formed a substantial electorate, even with coverture. But in practice custom rather than logic prevailed, and single women were treated for the most part as were their married counterparts.

Only in New Jersey, where the state constitution of 1776 enfranchised "all free inhabitants" who could meet property and residence requirements, did women vote; in 1790, possibly because of Quaker influence, an election law used the phrase "he or she" in referring to voters.

> *. . . all Inhabitants of this Colony, of full age, who are worth fifty pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote for Representatives in Council and Assembly; and also for all other public officers, that shall be elected by the people of the county at large . . .*

New Jersey Constitution, 1776

> *No person shall be entitled to vote in any other township or precinct, than that in which he or she doth actually reside at the time of the election . . . Every voter shall openly, and in full view deliver his or her ballot . . .*

Acts of New Jersey, 1797

The general tendency in suffrage law throughout the nineteenth century was to broaden the electorate by gradually eliminating property and racial qualifications; yet the New Jersey election statute did not become a model for other states. In 1797 the women's vote was thought to have been exercised as a bloc vote in favor of the Federalist candidate for Elizabethtown in the state legislature, and it was alleged to have made a real difference in the outcome of the election.

Faced with this gender gap, the defeated Democratic-Republicans launched a bitter campaign with two themes that were to appear and reappear as long as woman suffrage was debated in this country. First, they argued that women who appeared at the polls were unfeminine, forgetful of their proper place. Second, they asserted that women were easily manipulated, if not by husbands, then

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by fathers and brothers. It took ten years, but in 1807 New Jersey passed a new election law excluding all women from the polls, and no other state attempted New Jersey's 1776 experiment.

In the absence of a collective political movement, no delegate came to Philadelphia prepared to make an issue of woman suffrage or of any other distinctively female political concern; no one came prepared to engage in debate over the extent to which women were an active part of the political community.

With the benefit of hindsight, it is possible for historians to identify some political issues which politically empowered women might well have raised had the Constitution guaranteed their right to participate in a republican government. (Some of these issues were to be addressed only a few years later, by Montagnards and Jacobins in France.) One obvious issue is divorce reform. In some states divorce was nearly impossible in 1787; in all it was extremely difficult. Since the majority of petitioners for divorce were women, the issue was one in which women had a distinctive interest. The language of republicanism, with its acknowledgment that the new order validated a search for happiness, was taken by a number of people to imply that divorce reform was a logical implication of republicanism. But the Constitution said nothing about it, and the states loosened restrictions only slowly. Two generations later women's rights activists would place divorce reform high on their political agenda; it is probable that it would also have been given priority on an agenda drafted in the 1780's.

A second concern might have been pensions for widows of soldiers. The Continental Congress authorized modest pensions for the widows of officers, but widows of soldiers would not be provided with pensions until 1832, by which time, of course, many of them were dead. It is easy to think of other issues: the right of mothers to child custody in the event of divorce, restrictions on wife abuse, the security of dower rights. But expressions of opinion on these issues remained the work of individuals; no collective feminist movement gave them articulate expression as was the case in France. No organized female political pressure was brought to bear at the Constitutional Convention; there do not seem to have been American predecessors of the female Jacobin clubs of Paris.

The Constitution reflected the experience of the white upper and middle-class men who wrote it and the experience of their constituents, the men of the upper and lower middle classes, the farmers and artisans, who had, as historian Edward Countryman has observed, "established their political identity in the Revolution." Women had not yet, as a group, firmly established their political identity.

The Constitution did not explicitly welcome women as voters or take particular account of them as a class. However, what the Constitution left unsaid was as important as what it did say. The text of the Constitution usually speaks of "persons"; only rarely does it use the generic "he". Women as well as men were defined as citizens. The Constitution establishes no voting requirements, leaving it up to the states to set the terms by which people shall qualify to vote.

> **Article I, section 2:** *The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature.*

Thus women were NOT explicitly excluded from Congress, nor even from the Presidency. The Constitution, in fact, left an astonishing number of substantive matters open to the choices of individual states; every part of it was open to change by amendment. This flexibility is an important reason for the survival of the American Constitution, as contrasted to the other republican constitutions of the era, like the French, which were far more detailed and explicit, but also less resilient. Women might have been absorbed fully into the American political community without the necessity of constitutional amendment.

Yet this absorption did not occur automatically. No state imitated New Jersey's experiment with suffrage before the Civil War; only a few—Utah, Wyoming, Colorado—did so after the war. No state moved to place non-voters on juries, although there was obvious common sense in the argument that in order for a woman to be tried by her peers a jury should include women, whether or not women voted in that state. Although the old argument that the proper voter was a person of property eroded as liberals steadily decreased property requirements for voting by men, women were not enfranchised.

Elizabeth Cady Stanton, by L. Schamer. National Portrait Gallery, Smithsonian Institution, Washington, D.C.

Still, even without the vote, effective political coalitions of feminists and legal reformers developed at the end of the 1830s. They were interested in the codification and simplification of state laws. They pressed for the passage of Married Women's Property Acts that would enable married women to control property without necessitating cumbersome trusteeship arrangements. Beginning with a severely limited statute passed in Mississippi in 1839 and continuing throughout the century, state Married Women's Property Acts gradually extended the financial independence of married women, making it possible for a few feminists to entertain a vision of a full range of women's political activity, even under the older requirements of property-holding. However, the new control which women achieved over their own property was not accompanied by the extension of the franchise.

The New York State Married Women's Property Act provides an example of this type of legislation:

The real and personal property of any female [now married and] who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues and profits thereof shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female. . . . It shall be lawful for any married female to receive by gift, grant, devise or bequest, from any person other than her husband and hold to her sole and separate use, as if she were a single female, real and personal property, and the rents, issues and profits thereof, and the same shall not be subject to the disposal of her husband, nor be liable for his debts . . . .

A married woman may bargain, sell, assign, and transfer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account, and the earnings of any married woman from her trade . . . shall be her sole and separate property, and may be used or invested by her in her own name . . . .

Any married woman may, while married, sue and be sued in all matters having relation to her . . . sole and separate property . . . in the same manner as if she were sole . . . .

Every married woman is hereby constituted and declared to be the joint guardian of her children, with her husband, with equal powers, rights, and duties in regard to them, with the husband . . . .

New York State Married Women's Property Acts, 1848, 1860

Elizabeth Cady Stanton, who had been a strong supporter of the New York Married Women's Property Act, was also an energizing force behind the gathering of women in Seneca Falls in 1848. She and others who prepared and signed the "Declaration of Sentiments" at that meeting addressed forcefully the ways in which women had not been fully absorbed into the republican political order, although they were citizens. After a preface casting "Man" in a rhetorical role comparable to that played by King George III in the Declaration of Independence, the Declaration of Sentiments addressed constitutional and legal as well as social questions: trial by jury, the relationship between taxation and representation, the persistence of coverture.

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Suffragists before the House Judiciary Committee, 1871. Frank Leslie's Illustrated Newspaper, February 4, 1871. *Library of Congress.*

He has compelled her to submit to laws, in the formation of which she had no voice . . . .

He has made her, if married, in the eye of the law, civilly dead . . . .

He has taken from her all right in property, even to the wages she earns . . . .

After depriving her of all rights as a married woman, if single, and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it . . . .

Declaration of Sentiments

The legislative gains of the early part of the century and the emergence of a women's movement at mid-century were not, however, followed by a wave of enfranchisement. In fact, women found themselves excluded from the debate about the extension of the franchise which was engendered by the Civil War.

The Civil War was not only a military crisis but also a revolution in politics, which would be validated by the Thirteenth, Fourteenth, and Fifteenth Amendments. By now there was, most emphatically, a collective women's presence—in the Sanitary Commissions, the women's abolitionist societies, the Women's National Loyal League. But the "Woman Question" had not been central to the ideology of the Civil War, and once again, women found they could not claim its benefits by implication. Abolitionist and Republican feminists had permitted themselves to anticipate that suffrage would be the appropriate reward for their sacrifices and support of the war effort. Their resentment was therefore all the greater when woman suffrage was not made part of the post-war amendments. The inclusion of the word "male" in the second section of the Fourteenth Amendment—a section never enforced—rubbed salt in a raw wound.

Fourteenth Amendment, 1868

Section one

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section two

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to

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Myra Bradwell. *Library of Congress.*

any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty one years of age in such State . . .

Holding their tempers, suffragists embarked on a national effort to test the possibilities of the first section of the Fourteenth Amendment, only to discover that the Supreme Court rejected their arguments. It was tested first in 1873 by Myra Bradwell, a Chicago woman who had studied law with her husband. She had been granted a special charter from the State of Illinois permitting her to edit and publish the *Chicago Legal News* as her own business, a business she carried on with distinction. (After the Chicago fire destroyed many law offices, it was the files of Bradwell's *Legal News* on which the city's attorneys relied for their records.) Bradwell claimed that one of the "privileges and immunities" of a citizen guaranteed by Section 1 was her right to practice law in the State of Illinois and to argue cases. The Illinois Supreme Court turned her down, on the ground that as a married woman, she was not a fully free agent.

In her appeal to the Supreme Court, Bradwell's attorney argued that among the "privileges and immunities" guaranteed to each citizen by the Fourteenth Amendment was the right to pursue any honorable profession. "Intelligence, integrity and honor are the only qualifications that can be prescribed . . . . The broad shield of the Constitution is over all, and protects each in that measure of success which his or her individual merits may secure." But the Supreme Court held that the right to practice law in any particular state was a right that might be granted by the individual state; it was not one of the privileges and immunities of citizenship. A concurring opinion added an ideological dimension:

The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded on the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong or should belong to the family institution, is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state . . . many of the special rules of law flowing from and dependent upon this cardinal principle still exist in full force in most states. One of these is that a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the supreme court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counselor.

***Myra Bradwell* v. *State of Illinois*, 1873.**

Meanwhile, suffragists in a number of places attempted to test the other possibilities of the first section of the Fourteenth Amendment. In the presidential election of 1872, suffragist women in a number of districts appeared at the polls, arguing that if all citizens had the right to the privileges of citizenship, they could certainly exercise the right to vote. Susan B. Anthony presented herself at a

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barber shop in the eighth ward in Rochester, New York, which was serving as a polling place, and convinced two out of the three polling inspectors to register her, on the grounds that the New York State Constitution made no sex distinctions in the qualifications for voters. By the end of the day, fifteen more women had registered. On November 5, having first assured the inspectors that if they were prosecuted for admitting unauthorized persons to the polls, she would pay their legal fees, Anthony and the other women voted. But it was Anthony and the other women who were arrested for an illegal attempt to vote. When she was judged guilty, she refused to pay her bail, hoping to force the case to the Supreme Court. A supporter, however, thinking he was doing Anthony a favor, paid it. The case was set for trial; in the interlude she voted in the Rochester city elections, and no one made a fuss. When the trial was moved to another county, Anthony and her colleagues made a whirlwind tour, speaking in approximately twenty towns each, ensuring that public opinion would not be uniformly against them even in a strange locale.

Anthony reasoned that sex was a characteristic markedly different from youth or being an alien. Although aliens could not vote, an individual alien man could choose to become a naturalized citizen. Minors could not vote, but minors, in the nature of things, grew to adulthood. "Qualifications," she argued, "can not be in their nature permanent or insurmountable. Sex can not be a qualification any more than size, race, color, or previous condition of servitude."

The judge, wanting to deny Anthony the legal system as a forum, directed the jury to bring in a verdict of guilty, and immediately discharged the jury. He fined Anthony $100. When she announced that she would "never pay a dollar of your unjust penalty," he declined to enforce the punishment. "Madam, the Court will not order you to stand committed until the fine is paid." Thus he had it both ways; a verdict of guilty, which would dissuade others from following Anthony's path, but a refusal to punish, thus avoiding making Anthony a martyr.

The President of the Woman Suffrage Association of Missouri was able to do what Anthony could not. Observing that the "power to regulate is one thing, the power to prevent is an entirely different thing," Virginia Minor attempted to vote in St. Louis. When the registrar refused to permit her to register, she and her husband Francis, an attorney who had developed the distinction between regulation and prohibition of suffrage, sued him for denying her one of the privileges and immunities of citizenship. When they lost the case they appealed to the Supreme Court.

In *Minor* v. *Happersett*, decided in 1875, the Court ruled that change must happen as a result of explicit legislation or constitutional amendment, rather than by interpretation of the implications of the Constitution. In a unanimous opinion, the Court observed that it was "too late" to claim the right of suffrage by implication; the Founders had been men who weighed their words carefully. Nearly a hundred years of failure to claim inclusion by implication made a difference. What might have been gradual evolution in the Founders' generation was avoidance of legal due process a hundred years later—"If suffrage was intended to be included . . . language better adapted to express that intent would most certainly have been employed." The Court was not prepared to interpret the Constitution freshly: "If the law is wrong it ought to be changed; but the power for that is not with us . . . . " The decision of the Court meant that woman suffrage could not emerge from reinterpretation of the Constitution; it would require either an explicit constitutional amendment or a series of revisions in the laws of the states.

> *. . . For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage. If uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be.*
>
> **Minor v. Happersett, 1875.**

In the years between 1848 and 1876, American women had created a collective movement. It is true that it did not include the entire female population; many women were unaware and more were hostile. But the activists had brought into being an articulate and politically sophisticated pressure group which was prepared to offer an explicit and detailed criticism of the American political system and to make direct demands for inclusion in it.

Susan B. Anthony, by L. Schamer. National Portrait Gallery, Smithsonian Institution, Washington, D.C.

When Susan B. Anthony rose to speak on July 4, 1876, the strategies of feminist politics were being realigned. She had the court decisions in *Bradwell* and *Minor* in mind as she spoke. She addressed not only the issue of suffrage but also the exclusion of women from multiple aspects of the political community which the Constitution had created. The right to serve on a jury had been so precious to American men that some states had refused to ratify the Constitution until they were convinced it would be added; yet "the women of this nation have never been allowed a jury of their peers," even in crimes like infanticide or adultery, where women's perspective might well be different from that of men. Anthony decried the division of the community into a class of men, which governed, and a class of women, which was governed.

Anthony's generation of feminists would begin their campaign for suffrage to restore what the second section of the Fourteenth Amendment—with its introduction of the word *male*—had killed by implication. A suffrage amendment would be introduced in the Senate in 1878, and a new chapter in the political history of feminism would begin.

It is important to recognize that Stanton and Anthony's definition of equality under the Constitution was considerably more inclusive than the vote alone. It included a vision of egalitarianism in the *process* of lawmaking as well as in the outcome. Ever since the 1848 Declaration of Sentiments, it had included a vision of equality within the family, between husbands and wives, as well as social equality, between male and female citizens, in the public realm. In her Centennial Address, Anthony expressed the full range of this vision, attacking double standards in moral codes, unequal pay scales, unequal treatment of adulterers. She would not be surprised today to see wife abuse, female health, or the feminization of poverty emerge as topics high on the contemporary feminist agenda. "It was the boast of the founders of the republic, that the rights for which they contended were the rights of human nature. If these rights are ignored in the case of one-half the people, the nation is surely preparing for its downfall," she declared.

Anthony ended her Declaration of Rights with a ringing conclusion. If there are any schoolchildren today who still memorize, as children did in the nineteenth century, great moments in the oratorical tradition of this country—Webster's reply to Hayne, Lincoln's Gettysburg Address—they should add this to their repertory:

> *And now, at the close of a hundred years, as the hour-hand of the great clock that marks the centuries points to 1876, we declare our faith in the principles of self-government; our full equality with man in natural rights; that woman was made first for her own happiness, with the absolute right to herself—to all the opportunities and advantages life affords for her complete development; and we deny that dogma of the centuries, incorporated in the codes of all nations—that woman was made for man—her best interests . . . to be sacrificed to his will. We ask of our rulers, at this hour, no special privileges, no special legislation. We ask justice, we ask equality, we ask that all the civil and political rights that belong to citizens of the United States be guaranteed to us and our daughters forever.*

Suggested additional reading:

Elizabeth Cady Stanton et al. *The History of Woman Suffrage*, 6 vols. (1881–1922).

Alice S. Rossi, ed. *The Feminist Papers* (1973).

Linda K. Kerber is the author of *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, University of North Carolina Press, 1980) and co-editor, with Jane De Hart Mathews, of *Women's America: Refocusing the Past* (New York: Oxford University Press, 1982). She is professor of history at the University of Iowa.

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IX
Teaching Plan for Lesson 9
Abigail Adams on the Constitutional Rights of Women

Objectives

Students are expected to

1) identify and have a better understanding of the lack of legal rights of American women during the founding period of the United States;

2) analyze and appraise ideas about the constitutional rights of women in an exchange of letters between Abigail Adams and John Adams;

3) analyze and appraise ideas about denial of constitutional rights for women in a letter from John Adams to James Sullivan.

Preparing to Teach the Lesson

Read the essay by Linda K. Kerber, " 'Ourselves and our Daughters Forever': Women and the Constitution, 1787–1876." Pay special attention to the primary documents used, especially the correspondence between Abigail Adams and her husband John Adams.

Read the Lesson, "Abigail Adams on the Constitutional Rights of Women." Note the emphasis placed on the Abigail Adams letters in this Lesson.

Plan to spend at least three class periods on this Lesson.

Opening the Lesson

Write the following lines from a popular women's rights song on the chalkboard. Sing it or play a musical rendition of it. Students could then sing it together to the tune of "The Wearin' O' the Green," an Irish folk song:

Song: T'is just one hundred years ago our mothers and our sires
Lit up for all the world to see the flames of freedom's fires.
Through bloodshed and through hardship they labored in the fight.
Today we women labor still for liberty and right.

Chorus:

Oh, we wear a yellow ribbon upon our women's breast.
We are prouder of its sunny hue than of a royal crest.
'Twas God's own primal colors, born of purity and light.
We wear it now for liberty, for justice and for right.

Ask students to identify and explain the main idea of this verse. Ask how this main idea pertains to the framing of the U.S. Constitution in 1787 and to subsequent constitutional history.

Inform students that the main point of this Lesson is to examine the legal status and constitutional rights of women in the founding period of the United States.

Developing the Lesson

Ask students to read the Lesson and prepare answers to the questions in the various sections of the Lesson. Tell them to pay particular attention to the documents in the Lesson. Allow sufficient time for students to read and prepare their answers to questions about the documents. The documents in this Lesson are listed below:

- Letter from Abigail Adams to John Adams, March 31, 1776.
- Letter from John Adams to Abigail Adams, April 14, 1776.
- Letter from Abigail Adams to John Adams, May 7, 1776.
- Letter from John Adams to James Sullivan, May 26, 1776.

Conduct a class discussion about the questions that follow the exchange of letters between Abigail Adams and John Adams. Extend this discussion to include John Adams' letter to James Sullivan. Require students to explain and support their answers with evidence in the documents.

Concluding the Lesson

Divide the class into two groups. Require each group to select a chairperson to manage the group's discussion and a panel of three reporters to summarize and communicate the group's ideas to the class.

Assign to Group I the task of interpreting and defending the position about women's rights in John Adams' letters to Abigail Adams and to James Sullivan, which are included in this Lesson.

Assign to Group II the task of interpreting and rebutting the ideas in John Adams' letters to Abigail Adams and James Sullivan.

After the two groups have completed their discussions of the assigned tasks, reconvene the entire class. Ask the three-member panel of reporters from Group I to report its position on John Adams' letter. Then have the Group II panel report its position on the John Adams' letter. These reports should not exceed ten minutes.

After the two reports have been presented, open the discussion to the entire class. Ask class members to raise questions or make comments (critical or supportive) about the two panel reports.

IX
Lesson 9
Abigail Adams on the Constitutional Rights of Women

In the spring of 1776, shortly before members of the Continental Congress in Philadelphia declared American independence from Great Britain, and eleven years before the 1787 Constitution was written, Abigail Adams, wife of future president John Adams, corresponded with her husband concerning the new government and the seldom-discussed issue of "women's rights."

What kind of person was Abigail Adams? What was the legal status of women in the America of her time?

Abigail Adams and the Status of Women in 18th-Century America

Born in Weymouth, Massachusetts in 1744, Abigail was the daughter of the Reverend William Smith, a Congregational minister, and Elizabeth Quincy Smith. Abigail had no formal schooling, but she learned much from her parents, and was encouraged to select and read books in her father's large private library. Later, Abigail wrote in a letter to a friend that what she learned she "picked up ... as an eager gatherer" rather than from "systematic instruction."

A highly intelligent person, Abigail's educational achievements, though informal, were unusual for a woman of her day. So was the active partnership she shared with her husband, who respected and admired her opinions, and frequently sought out her views. She described herself as having an innate desire to be a "rover," but her sex denied her that privilege.

During Abigail's lifetime and for many years to follow, women were expected to stay in the background rather than on the center stage of political and societal activity. At the time of the Constitutional Convention in 1787, women had few legal rights and economic opportunities. Females were barred from most occupations. They were not allowed to vote, manage property, make binding contracts, sue in court, serve on juries, speak in public (for the most part); nor could they act as the legal guardians of their children.

Under English common law, the model for American lawmakers, husband and wife were treated legally as one person, and the husband was definitely in the driver's seat! Any money or land a woman possessed became the property of her husband once she married. Dr. Benjamin Rush once warned a young female that there would be "no will of your own when you marry."

A married woman gave up all individual status, and kept no legal right to her own earnings or even her personal belongings. The husband was held responsible for supporting his wife and paying her debts. Men simply believed that women were not capable of handling business affairs.

Most women of the founding period of the United States lived in a rural culture based on an agricultural economy. In the typical "woman's domain" daily activities took place within a feminine, domestic circle. There was much local isolation, political apathy, and very little literacy among women. Men discussed politics in terms that largely excluded women. The woman's role was defined by society as being primarily in the home—mainly the kitchen.

Under the law of *coverture*, a married woman's property was under her husband's control during the life of their marriage. State legislatures sent mixed messages about male and female political behavior. There were different standards for the two sexes. Women, married or single, were responsible for acts of espionage or treason and were subject to full penalties under the law. Yet a married woman could make no political choices of her own. Indeed, a married woman was "covered" by her husband's civic identity. She lost the power to act independently, yet remained an independent moral being under the law, quite capable of committing and being tried for crimes. Unmarried women with property should have been excluded from such treatment, but custom usually prevailed. Single women were treated no better than their married counterparts.

Safeguards for women's control of property, such as married women's property acts, preservation of dower rights, and laws concerning divorce (it was almost impossible for a woman to seek divorce), were in the future of American women. These rights and privileges were not part of the founding period of the United States.

An Exchange of Letters Between John and Abigail Adams

During the Revolutionary War, issues of human rights were raised to the forefront in public debates. And so it was in the Continental Congress, where in the spring and summer of 1776, participants discussed the "unalienable rights" of individuals and the possibility of declaring independence from Britain. A prominent member of the Continental Congress was the husband of Abigail Adams—John Adams of Massachusetts. From the end of March until early May 1776, Abigail and John Adams corresponded regularly. Read the excerpts from the three letters that follow and prepare to discuss the main ideas about women's rights in these letters.

Abigail Adams to John Adams
March 31, 1776

. . . I long to hear that you have declared an independency [A Declaration of Independence for the United States of America, which was formally issued in July 1776]—and, by the way, in the new code of laws [constitution], which I suppose it will be necessary for you to make, I desire you would remember the ladies, and be more generous and favorable to them than [were] your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute. But such of you as wish to be happy willingly give up the harsh title of master for the more tender and endearing one of friend. Why, then, not put it out of the power of the vicious and Lawless to use us with cruelty and indignity . . . ? Men of sense in all ages abhor those customs which treat us only as the vassals of your sex. Regard us then as Beings, placed by providence under your protection, and in imitation of the Supreme Being make use of that power only for our happiness.

John Adams to Abigail Adams
April 14, 1776

As to your extraordinary Code of Laws, I cannot but laugh. We have been told that our Struggle [the rebellion against Britain] has loosened the bands of Government everywhere. That Children and Apprentices were disobedient—that schools and Colleges were grown turbulent—that Indians slighted their Guardians and Negroes grew insolent to their Masters. But your Letter was the first intimation that another Tribe [women] more numerous and powerful than all the rest [had] grown discontented. This is rather too coarse a Compliment, but you are so saucy, I won't blot it out.

Depend upon it, we know better than to repeal our Masculine systems. Although they are in full force, we know they are little more than theory. We dare not exert our Power in its full Latitude. We are obliged to go fair, and softly, and in Practice, you know We are the subjects. We have only the Name of Masters, and rather than give up this, which would completely subject Us to the Despotism of the Petticoat, I hope General Washington, and all our brave Heroes would fight. . . . A fine story indeed, I begin to think the ministry as deep as they are wicked. After stirring up Tories, landjobbers, trimmers, bigots, Canadians, Indians, Negroes, Hanoverians, Hessians, Russians, Irish Roman Catholics, Scotch, . . . at last they have stimulated the [women] to demand new privileges and [to] threaten to rebel.

Abigail Adams to John Adams
May 7, 1776

I cannot say that I think you very generous to the Ladies, for whilst you are proclaiming peace and good will to Men, Emancipating all Nations, you insist upon retaining an absolute power over Wives. But you must remember that Arbitrary power is like most other things which are very hard, very liable to be broken—and notwithstanding all your wise Laws and Maxims we have it in our power not only to free ourselves but to subdue our Masters, and without violence throw both your natural and legal authority at our feet. . . .

Answer the following questions about the exchange of letters between Abigail Adams and John Adams. Use information in these documents to support or justify your answers.

1. How does Abigail Adams depict men in her letter of March 31, 1776?
2. Do you agree with her viewpoint? Why or why not?
3. On what principle does Abigail Adams base her demand that women "will not hold ourselves bound by any laws in which we have no voice or representation."
4. How does her statement compare with the attitudes of American "Patriots" toward the British government during the Revolutionary period?
5. Does John Adams' reply to his wife show a serious concern for her views?
6. Would you classify John Adams' reply as being one typical of a modern-day "male chauvinist"? Why or why not?
7. What does John Adams mean when he says "We have only the name of masters"? Interpret his meaning of fearing the "despotism of the petticoat"?
8. What influence does John Adams think revolutionary activities have on various minority groups?
9. Examine the May 7, 1776 letter of Abigail Adams. What does she mean by "arbitrary power is like most other things which are very hard, very liable to be broken. . . ."?

John Adams' Letter to James Sullivan

In the following letter, John Adams reflected dominant views of his time about the legal rights of women. Examine the excerpts from this letter and respond to the questions that follow it.

John Adams to James Sullivan
May 26, 1776

It is certain, in theory, that the only moral foundation of government is, the consent of the people. . . .

But why exclude women?

You will say, because their delicacy renders them unfit for practice and experience in the great businesses of life, and the hardy enterprises of war, as well as the arduous cares of state. Besides, their attention is so much engaged with the necessary nurture of their children, that nature has made them fittest for domestic cares. And children have not judgment or will of their own. True. But will not these reasons apply to others? Is it not equally true, that men in general, in every society, who are wholly destitute of property, are also too little acquainted with public affairs to form a right judgment, and too dependent upon other men to have a will of their own? If this is a fact, if you give to every man who has no property, a vote, will you not make a fine encouraging provision for corruption, by your fundamental law? Such is the frailty of the human heart, that very few men who have no property, have any judgment of their own. They talk and vote as they are directed by some man of property, who has attached their minds to his interest. . . .

The same reasoning which will induce you to admit all men who have no property, to vote, with those who have, for those laws which affect the person, will prove that you ought to admit women and children; for, generally speaking, women and children have as good judgments, and as independent minds, as those men who are wholly destitute of property; these last being to all intents and purposes as much dependent upon others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents. . . .

Depend upon it, Sir, it is dangerous to open so fruitful a source of controversy and altercation as would be opened by attempting to alter the qualifications of voters; there will be no end of it. New claims will arise; women will demand a vote; lads from twelve to twenty-one will think their rights not enough attended to; and every man who has not a farthing, will demand an equal voice with any other, in all acts of state. It tends to confound and destroy all distinctions, and prostrate all ranks to one common level.

Answer the following questions about John Adams' letter to Sullivan. Use information in this document to support or justify your answers.

1. What is John Adams' position on voting rights for women?
2. How does Adams try to justify and explain his position on voting rights for women? Identify at least two reasons used by Adams in support of his position.
3. What reasons could be advanced in opposition to Adams' position on voting rights for women? Present and explain at least two reasons that could be used to argue against Adams on this issue.

In the preceding letter, John Adams stated what most of his constituents believed. If dependent men were given the vote, the end result would be that landlords and employers would basically gain or exercise *multiple* votes. To give a vote to a person, including a woman, dependent on another's will would be giving a double vote in reality to the one in true power. Society assumed that a wife always did her husband's bidding. Would not giving the franchise to women be the same as giving married men a political advantage over their bachelor brothers? At this time in United States history, nearly all states denied the vote to married women, as well as to men without property. Single women fared no better. Only in New Jersey, where "all free inhabitants" (who met property and residence requirements) were granted the franchise, could women vote. Even New Jersey eventually reverted as a result of political lobbying, and in 1807 a new election law excluded *all* women from the polls.

By the time of the writing of the Constitution in 1787 there were no doubt several issues of particular concern to women in addition to suffrage, including divorce reform, pensions for the widows of Revolutionary soldiers, child custody, wife abuse, dower rights; but no organized female political pressure was in force, and not a single male delegate expressed such female concerns. The final document, ratified in 1788, reflected the dominant ideas of the men who wrote it and their constituents, which did not include concerns for the rights of women.

What *was* important, however, was what the Constitution left unsaid. In speaking of the new nation's citizens, "persons" is used ordinarily, seldom the generic term "he." Women were not specifically excluded from the 1787 Constitution. A number of choices on substantive matters, such as the right to vote, were clearly left to the states, and the Constitution would be left open to change by practice, amendment, or interpretation. Such flexibility, of course, is an important reason why the U.S. Constitution has endured, and it provided an opening for the eventual inclusion of women.

Reviewing and Interpreting Documents

Divide the class into two groups. Group I has the task of interpreting and defending the position on women's rights in John Adams' letters to Abigail Adams and James Sullivan. Group II has the task of interpreting and rebutting the position on women's rights in John Adams' letters to Abigail Adams and James Sullivan. Select three members of each group to briefly report the ideas of the group to the entire class.

APPENDIX

Constitution of the United States

Resources for Teachers in ERIC

CONSTITUTION OF THE UNITED STATES

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.][1] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,][2] for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.][3]

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than

[1] Changed by section 2 of the Fourteenth Amendment.

[2] Changed by the Seventeenth Amendment.

[3] Changed by the Seventeenth Amendment.

to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be [on the first Monday in December,][4] unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than Two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[4] Changed by section 2 of the Twentieth Amendment.

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.][5]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of the President; neither shall any person be eligible to that Office who shall not have at-

[5] Superseded by the Twelfth Amendment.

tained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.][6]

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation;—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; between a State and Citizens of another State;—between Citizens of different States—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each

[6] Modified by the Twenty-Fifth Amendment.

State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.][7]

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names,

	Go. Washington— Presidt. and deputy from Virginia
New Hampshire	John Langdon Nicholas Gilman
Massachusetts	Nathaniel Gorham Rufus King
Connecticut	Wm. Saml. Johnson Roger Sherman
New York	Alexander Hamilton
New Jersey	Wil: Livingston David Brearley Wm. Paterson Jona: Dayton
Pennsylvania	B Franklin Thomas Mifflin Robt Morris Geo. Clymer Thos. FitzSimons Jared Ingersoll James Wilson Gouv Morris
Delaware	Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom
Maryland	James McHenry Dan of St Thos. Jenifer Danl Carroll
Virginia	John Blair— James Madison Jr.
North Carolina	Wm. Blount Richd. Dobbs Spaight Hu Williamson
South Carolina	J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler
Georgia	William Few Abr Baldwin

Attest William Jackson Secretary

[7] Superseded by the Thirteenth Amendment.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLES IN ADDITION TO, AND AMENDMENTS OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

Amendment I.[8]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re- examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI.[9]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[8] The first ten Amendments (Bill of Rights) were ratified effective December 15, 1791.

[9] The Eleventh Amendment was ratified February 7, 1795.

Amendment XII.[10]

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; —The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President—][11] The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice- President of the United States.

Amendment XIII.[12]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV.[13]

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV.[14]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI.[15]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived,

[10] The Twelfth Amendment was ratified June 15, 1804.

[11] Superseded by section 3 of the Twentieth Amendment.

[12] The Thirteenth Amendment was ratified December 6, 1865.

[13] The Fourteenth Amendment was ratified July 9, 1868.

[14] The Fifteenth Amendment was ratified February 3, 1870.

[15] The Sixteenth Amendment was ratified February 3, 1913.

without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII.[16]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII.[17]

[**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

Amendment XIX.[18]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX.[19]

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI.[20]

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XXII.[21]

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the Office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

[16] The Seventeenth Amendment was ratified April 8, 1913.
[17] The Eighteenth Amendment was ratified January 16, 1919. It was repealed by the Twenty-First Amendment, December 5, 1933.
[18] The Nineteenth Amendment was ratified August 18, 1920.
[19] The Twentieth Amendment was ratified January 23, 1933.
[20] The Twenty-First Amendment was ratified December 5, 1933.
[21] The Twenty-Second Amendment was ratified February 27, 1951.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII.[22]

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV.[23]

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV.[24]

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI.[25]

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

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[22] The Twenty-Third Amendment was ratified March 29, 1961.

[23] The Twenty-Fourth Amendment was ratified January 23, 1964.

[24] The Twenty-Fifth Amendment was ratified February 10, 1967.

[25] The Twenty-Sixth Amendment was ratified July 1, 1971.

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These references include publications cited in the nine parts of this volume. In addition, a recently published book must be highlighted: *Roots of the Republic: American Founding Documents Interpreted*, edited by Stephen L. Schechter, Richard B. Bernstein, and Donald S. Lutz, and published in 1990 by Madison House of Madison, Wisconsin. As its title indicates, this book includes core documents in the founding of the United States with valuable commentaries about the contents of these primary sources and about how to use documents in teaching. Thus, the volume compiled by Schechter, Bernstein, and Lutz exactly fits the objectives of this volume, *Ideas of the Founders on Constitutional Government*, and can be used in concert with it.

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